

EXHIBIT B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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21-CR-265 (PKC)

UNITED STATES OF AMERICA,

Plaintiff,

United States Courthouse
Brooklyn, New York

-against-

January 15, 2025
10:00 a.m.

YONG ZHU,

Defendant.

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TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING
BEFORE THE HONORABLE PAMELA K. CHEN
UNITED STATES DISTRICT JUDGE

APPEARANCES

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Also Present:

YONG ZHU, DEFENDANT
PROBATION OFFICER TONER
SPECIAL AGENT BUONO
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1 (In open court.)

2 THE COURTROOM DEPUTY: Criminal cause for a
3 sentencing docket 21-CR-265, United States versus Yong Zhu.

4 Will the parties please state their appearances for
5 the record starting with the Government.

6 MS. CHEN: Good morning, Your Honor. Irisa Chen for
7 the Government. I'm joined by Meredith Arfa, as well as
8 Christine Bonomo, child attorney from the National Security
9 Division, Officer Jeremy Toner from probation and Special
10 Agent Christopher Bruno from the FBI.

11 THE COURT: All right. Good morning to all of you.

12 MS. ARFA: Good morning, Your Honor.

13 MR. SILVERMAN: Good morning, Your Honor.

14 Benjamin Silverman, here with Zhu Yong and we also
15 have with us today his son, Ju Li and his daughter-in-law
16 Maggie Wong. They're sitting -- they're standing now in the
17 front row of the gallery.

18 THE COURT: All right. Good morning to all of you,
19 as well. Have a seat.

20 Let's swear in our interpreter.

21 (Whereupon, NANCY WU was sworn as interpreter.)

22 THE INTERPRETER: Yes, I do.

23 THE COURTROOM DEPUTY: Please state, spell your
24 name, and then the language you're interpreting.

25 THE INTERPRETER: Nancy Wu, W-U. Mandarin

1 interpreter.

2 THE COURT: Okay. Good morning to you.

3 Everyone can remain seated during the proceedings so
4 that you can use the microphones. We are here for sentencing
5 in this matter. Let me start off by placing a few things on
6 the record. And, Ms. Wu, let me know if, at any point, I go
7 too quickly or I don't speak clearly enough for you.

8 On June 20, 2023, the defendant was convicted at
9 trial by jury of all four counts of the superseding S-1
10 indictment. Count One charges him with conspiracy to act as
11 an agent of the Chinese Government without prior notification
12 to the attorney general as required by law, Count Two charges
13 him with acting as an agent of the Chinese Government without
14 prior notification to the attorney general as required by law.
15 Count Three charges him with conspiracy to engage in
16 interstate stalking with respect to John Doe 1, and Jane
17 Does 1 and 2, and then finally, Count Four charges him with
18 interstate stalking with respect to John and Jane Doe 1.

19 I've received and reviewed in preparation for
20 sentencing, the following: The presentence report dated
21 October 11, 2024, and an addendum to that report dated
22 January 7, 2025. The presentence report in October was
23 accompanied by a presentence -- probation department
24 sentencing recommendation. The parties should have received a
25 copy of that before today.

1 Did the Government get that?

2 MS. CHEN: Yes, Your Honor.

3 THE COURT: And the defense?

4 MR. SILVERMAN: Yes, Your Honor.

5 THE COURT: Okay. I've received the defense's
6 sentencing submission dated January 3, 2025, and a supplement
7 to that on January 14, 2025. The defendant's sentencing
8 submissions include letters of support for the defendant.

9 I also have received and reviewed the defense letter
10 to probation objecting to portions of the presentence report.
11 I've received the Government's sentencing submission dated
12 January 10, 2025, as well as the Government's presentence
13 report objections dated October 25, 2024.

14 Is there anything else I should have from the
15 Government?

16 MS. CHEN: No, Your Honor.

17 THE COURT: From the defense?

18 MR. SILVERMAN: No, Your Honor.

19 THE COURT: Okay. Mr. Silverman, if you and your
20 client reviewed and discussed the probation department's
21 presentence report and addendum, as well as their sentencing
22 recommendation?

23 MR. SILVERMAN: Yes, Your Honor.

24 THE COURT: Okay. Let's -- is either side --
25 sorry -- seeking an evidentiary hearing on any issue relating

1 to sentencing?

2 Government?

3 MS. CHEN: No, Your Honor.

4 MR. SILVERMAN: No, Your Honor.

5 With the caveat that with respect to the vulnerable
6 victim enhancement, there is an argument that the Government
7 made that we'd like to address with a proffer. We don't think
8 it requires a hearing and, in fact, we think it's something
9 that's also reflected in the Government's letter. But we
10 would like to make sure that it's clear for the record. And
11 this is, of course, not just a two-level enhancement but it's
12 a four-level adjustment to the guidelines because it precludes
13 the Zero-Point Offender reduction, so it's quite significant
14 in terms of how it affects the guidelines computation from
15 level 25 to what we believe would be appropriately, 21.

16 We also believe that other ways that the guidelines
17 are calculated would -- are inappropriate and that it should
18 be lower than that. But just this one enhancement is a
19 four-level swing in the guidelines. And we believe it can be
20 resolved on the legal question of whether there's a nexus and
21 on Page 14 of the Government's letter, they asked the Court to
22 find that because the PRC Government had the ability to bring
23 Mr. Zhu's sister here instead of his father that the Court
24 should therefore find that they selected the father based on
25 his vulnerability.

1 We think that's not only speculation rather than
2 anything that could be found based on a preponderance of the
3 evidence, but it's also contra the evidence which is what I
4 want to point out. And, in fact, on the next page of the
5 Government's letter, it notes the importance of filial piety
6 in a Confucian society, and so the father is not the sister.
7 And so familial love is important for any sibling or anyone in
8 one's family, but the parents are different in nature and so
9 we think that --

10 THE COURT: Why don't you save this for later. What
11 you are trying to say, I guess, in response to my question is
12 you want to reserve the possibility that you might seek a
13 *Fatico* on this issue but I doubt you'll need it.

14 MR. SILVERMAN: Thank you, Your Honor. We
15 understand.

16 THE COURT: So why don't you hold your thoughts for
17 now.

18 MR. SILVERMAN: Thank you.

19 THE COURT: Okay. So, Government, we're all victims
20 of the crimes committed by the defendant notified of their
21 right to attend the sentencing and speak at the sentencing.

22 MS. CHEN: Yes, Your Honor. They were notified and
23 they have opted not to appear and speak today.

24 THE COURT: Okay. I'm obviously aware of the victim
25 impact statements that they've provided to the probation

1 department and which are set forth in paragraphs 105 and 106
2 of the presentence report. So I have reviewed those before
3 today. Let's turn now to the guidelines calculation and we do
4 have a number of objections as previewed in part by
5 Mr. Silverman to address.

6 So first of all, the question arises as to Counts
7 One and Two, whether or not there is an analogous or
8 sufficiently analogous guidelines provision for those two
9 counts which charge a violation of Section 951 relating to
10 being an agent of a foreign Government but not registering
11 with the attorney general.

12 The probation department and the Government have
13 taken the view that there isn't a sufficiently analogous
14 sentencing guidelines provision and there obviously isn't one
15 that applies or references this crime directly and that,
16 therefore, I should apply the sentencing factors under Section
17 3553(a), which is what the sentencing guidelines direct where
18 there's no sufficiently analogous guideline provision.

19 The defense objects and argues that the stalking
20 guidelines that are applied to Counts Three and Four -- and
21 I'm going to quote Mr. Silverman -- "best encompass the
22 charged improved conduct," end quote, in Counts One and Two.
23 Mr. Silverman argues that the conduct that supports the
24 stalking charges in Counts Three and Four is almost all the
25 same conduct that supports the charges in Counts One and Two

1 and, that, I think, fairly summarizes the gist of your
2 argument.

3 The probation department responds in the addendum
4 that relying on the stalking guideline to capture the conduct
5 of being an unregistered foreign agent appears to undercut
6 Counts One and Two entirely, and I'm excerpting from what
7 their response was.

8 Mr. Silverman, you could be heard on this further,
9 if you'd like. But I'll tell you that I do agree with the
10 Government and the probation department and I'm happy to
11 explain why. But if you'd like another opportunity to argue
12 this further, please do.

13 MR. SILVERMAN: Thank you, Your Honor.

14 I won't belabor the points that we've preserved, but
15 there is one additional thing that I want to add, which is
16 what we're really trying to avoid here, is what we think is
17 triple counting by probation and double counting by the
18 Government. And I'll explain what I mean. So there's a
19 two-level enhancement that's applied for a pattern of
20 stalking. But then the pattern of stalking is broken into
21 separate conspiracies. So there's three levels added for
22 grouping. So you have three levels for grouping and two
23 levels for a pattern enhancement that are really applying for
24 the same thing. And then when probation -- so that's double
25 counting in our view. And then when probation adds

1 consecutive time for Counts One and Two, we view that as
2 triple counting because this is all coterminous, relevant
3 conduct that's tied together. And so what we're really trying
4 to do -- because certainly when there's no referenced
5 guideline it always creates difficulty. But what we're really
6 trying to do is to avoid multiple counting for the same
7 aggravating feature, which is that there were multiple people
8 who were victimized by the conspiracy. And there are --

9 THE COURT: Go ahead.

10 MR. SILVERMAN: I just -- the only other thing I
11 would add in response to the probation addendum is that
12 probation's explanation that the Court just quoted we think
13 misunderstands how the guidelines work. And I appreciate that
14 probation does a lot more guidelines calculations than lawyers
15 do. But under 3D1.4, for example, if there's more than a
16 nine-level difference between different kinds of conduct, the
17 lower conduct doesn't impact the guidelines at all.

18 So the idea that the guidelines necessarily require
19 that separate conduct increase the sentences wrong and here
20 what we have is relevant conduct, so I think probation's
21 entire explanation for why consecutive time is necessary
22 misapprehends how the guidelines function. Sometimes there's
23 a grouping analysis in this case the way we would have grouped
24 would have increased by one level, which is a modest increase.
25 Sometimes the grouping increase provides for no increase, but

1 it certainly doesn't necessarily require an increase, so we
2 just think that that's mistaken. But the real issue, as I
3 said, is that we're trying to avoid double or triple counting
4 for the same feature of the offense.

5 THE COURT: Right. So you're arguing essentially
6 that there's some multiplier effect by virtue of how the
7 guidelines get calculated if they're treated -- if one is
8 treated outside the guidelines regime and I guess one is
9 treated within the guidelines regime?

10 MR. SILVERMAN: Yes, Your Honor.

11 THE COURT: But I think that argument, which I'm not
12 saying has no merit, is better addressed as an argument about
13 the overstatement of the guidelines with respect to the
14 seriousness of the crime committed by this particular
15 defendant, because, again, what we're dealing with is the
16 theoretical or prescribed application, the formulaic
17 application, if you will, of these numeric guidelines.

18 It's often the case that the guidelines application,
19 which is technically correct, still overstates the seriousness
20 of a particular defendant's criminal activity for the reasons
21 that you say. The somewhat unforeseen consequences of having
22 a conspiracy with many acts that were committed and, as I'm
23 going to tell you, spoiler alert, I think correctly get
24 counted as multiple offenses for the reasons that have been
25 set forth in the papers.

1 And so therefore, obviously, the guidelines cannot
2 contemplate every iteration or application of them. And so I
3 think your argument is better used to say that here there
4 is -- or rather, here, the guidelines overstate the
5 seriousness of his criminal conduct for the reason that you
6 just said. And you don't even have to repeat it, you could
7 just refer back to it later.

8 But the reason I'm going to disagree with you is
9 because I think the guidelines should be calculated faithfully
10 and then all of these exceptions or maybe deviations or
11 variances from it can be discussed independently.

12 So let me explain why it is, I think, that probation
13 actually is correct and, in fact, I think the way they phrased
14 it is also correct, because while it's true that the physical
15 acts or conduct that supports these two sets of charges,
16 stalking on the one hand, and being an unregistered foreign
17 agent on the other, is largely the same. There are obviously
18 some differences like not registering and knowingly working
19 for the Chinese Government, those are major ones, I would say.
20 But I agree with probation that -- and the Government -- that
21 applying the stalking guidelines would negate what is the very
22 distinct features and purposes with respect to these two
23 different sets of crimes.

24 Unlike the stalking offense, the critical element of
25 the foreign agent offense is the defendant's knowing

1 involvement with a foreign government to carry out that
2 foreign government's directives with respect to persons and
3 things in this country, all while not alerting the U.S.
4 Government about those activities. It is the intrusion and
5 interference into the affairs of the U.S. citizens and
6 residents and the compromising of U.S. National Security
7 interests that is at the heart of the foreign agent crime, and
8 that doesn't appear, of course, anywhere in terms of the
9 purpose or harms trying to be prevented by the stalking crime.

10 Now, obviously, as we all recognize here, there's an
11 overlap because the conduct that was used to carry out the
12 foreign agent crime was stalking or involved stalking, I
13 should say, as a subset of what was going on. But the harms
14 that are policed or sought to be prevented by the stalking
15 crimes are different. They're typically smaller in scope and
16 very different in character. But as here there is an overlap.
17 But I don't think it's one that should prompt me to basically
18 discount the very different and purposely very different goal
19 of the foreign agent statute, the Section 951 crime.

20 So I am going to find that the stalking guidelines
21 provision is not sufficiently analogous to apply to Counts One
22 and Two because really all that the statutes have in common is
23 the physical actions involved or some of the physical actions
24 involved, and the stalking guidelines do not sufficiently
25 reflect or encompass the broader purposes and goals of the

1 foreign agent registration statutes or Section 951. So I am
2 going to rely, instead, on the 3553(a) sentencing factors in
3 determining an appropriate sentence for Counts One and Two.
4 And, of course, I have to consider them in any event when
5 deciding on an appropriate sentence for Counts Three and Four,
6 as well.

7 Now, let's turn to the vulnerable victim objection
8 or issue. The defense has objected to the two-level
9 enhancement with respect to the stalking conspiracy
10 conviction, specifically as to John Doe 1's father, who is
11 John Doe 2. The defense argues that there's no evidence that
12 the defendant knew that John Doe 2 would be brought to the
13 U.S., that John Doe 2's vulnerability had no nexus to the
14 charged crime, that even if the defendant knew John Doe 2 was
15 being brought to the U.S., there's no evidence that the
16 defendant knew John Doe 2 was infirm, versus -- and this is a
17 quote -- "merely elderly."

18 And then obviously, I think you've added an
19 argument, as well, based on what the Government has said about
20 choosing the less vulnerable victim or at least the Government
21 choosing to send the father, instead of the sister thereby
22 enhancing the notion that he qualifies as someone who's
23 vulnerable.

24 I do agree with you, Mr.-- starting I guess
25 backwards -- I do agree with you, Mr. Silverman that I wasn't

1 particularly convinced about this argument about picking the
2 younger or the older versus the younger family member. I
3 think in this situation, there are other reasons, none of
4 which we all will know or could know, why the father would be
5 picked. But I do agree that there's something about having
6 someone's parent as opposed to someone's sister come and try
7 to convince you to take a very grave action, namely return to
8 the country that wants to prosecute you, is probably why the
9 father was chosen or likely would be the reason the father was
10 chosen over the sister. I also wondered because there were
11 references to the sister being jailed for two years, so I
12 don't actually know where she was at the time that the visit
13 occurred. But I didn't bother to go back and match up the
14 dates.

15 So I'll hear from both parties further, but I have
16 to say to the Government this time that I'm more inclined to
17 agree with the defense on this. And quite frankly, I didn't
18 actually realize that there was an additional two levels that
19 would be affected because of the Zero-Point Offender
20 guidelines. That isn't something that I focused on. And I
21 don't think the parties necessarily mentioned it. So I gather
22 the Zero-Point Offender benefit cannot be applied if the crime
23 involved a vulnerable victim?

24 MS. CHEN: I think that's correct, Your Honor. And
25 we can address this more should we need to. But there are

1 also additional reasons why the Zero-Point Offender reduction
2 would not apply in this case, notably, that there was a
3 credible threat of violence, including the 2018 threatening
4 note that was posted on the victim's door. So we would also
5 argue for that reason, it's a separate reason why the
6 Zero-Point Offender reduction would not apply, setting aside
7 the vulnerable victim.

8 THE COURT: And it wasn't applied here, I noticed in
9 the guidelines calculation, right?

10 MS. CHEN: It was not applied here, Your Honor.

11 THE COURT: Right. Okay. So that might not be a
12 genuine issue. But let me hear from the Government on why I
13 should apply this vulnerable victim enhancement.

14 MS. CHEN: Sure, Your Honor.

15 So I think a couple of facts I think that are
16 notable here. First is John Doe 2's age which hasn't really
17 been discussed. Rather, we've been discussing whether or not
18 he was infirmed or ill, which he was, as the record supports
19 that he had a brain hemorrhage in early 2017. The Government
20 also argues that the defendant did know about the use of
21 John Doe 2 in connection with this overall conspiracy given
22 that in his post-arrest statement he notably said that he was
23 aware that Xu Jin's father was brought to the United States in
24 an effort --

25 THE COURT: I'm going to stop you for one second.

1 Did you, folks, provide spellings of all these names
2 to the court reporter?

3 MS. CHEN: We have not, but we can.

4 THE COURT: Okay. So you'll have to do so
5 afterwards. That's why in part I was using John Doe 1 and 2.
6 It just might be easier on the court reporter, but go ahead.

7 MS. CHEN: Understood. We'll do our best to also
8 use John Doe, Your Honor.

9 So John Doe 1, the defendant said that he knew that
10 John Doe 1's father was brought to the United States in an
11 effort to convince his son to go back to China. And so the
12 Government would argue on that basis alone that shows that the
13 defendant was certainly aware of the April 2017 operation to
14 bring John Doe 2 to the United States.

15 And, Your Honor, I think there is not enough focus,
16 frankly, on John Doe 2's age as appropriately triggering this
17 enhancement, given that particularly, at trial, Jane Doe 1, as
18 well as her sister, both testified to their reaction of an
19 80-year-old man being essentially dropped on Jane Doe 1's
20 sister's doorstep. And we noted that in the Government's
21 sentencing submission as frankly, getting the reaction that
22 the co-conspirators here wanted, which is that this is such an
23 egregious act that it may very well intimidate, harass, and
24 otherwise, get John Doe 1 to do, frankly, exactly what the
25 co-conspirators wanted to return to China or to, otherwise,

1 disclose his location which, of course, the trial evidence
2 shows did occur as part of that incident.

3 THE COURT: Can I ask you one question in that
4 regard. You refer the probation department to trial
5 Exhibit 1020. And then the probation department refers to
6 bullet points. What was Exhibit 1020? Because I think it was
7 offered also to show -- maybe that was the post-arrest
8 interview. No, they can't --

9 MR. SILVERMAN: We have a copy if Your Honor would
10 like a copy.

11 THE COURT: Okay. If someone will hand it up. I
12 was just wondering, because the probation department might
13 have thought it was relevant to showing what I'm -- I'm
14 interested in, in part is the defendant's knowledge of all
15 these things. Not just the effort to have the father convince
16 the son to return home, but rather, the defendant's knowledge
17 of the age of the father, as well as any infirmities he had,
18 such as, I assume, there's no evidence the defendant knew of
19 the father's heart condition et cetera.

20 MS. CHEN: That's right.

21 And, Your Honor, Government Exhibit 1020 is an
22 e-mail attachment sent by, if you'll recall, the translator
23 that the defendant was working with, sending the personal
24 identifying information and other personal information to
25 codefendant Michael McMahon, in, I believe, October of 2016

1 when they're originally engaging Defendant McMahon in
2 investigating the victims and his family.

3 And in that attachment, there's obviously detailed
4 information including Social Security numbers and other
5 information about John Doe 1 and his family, but also,
6 notably, a photograph of John Doe 2 and his wife, they're
7 visibly older, and you can see that already in that
8 attachment, the defendant is asking McMahon to follow John
9 Doe 2 while he's in the U.S. and try and use him as part of
10 this scheme already. And so that's why the Government
11 directed probation to that particular exhibit because it
12 certainly shows that the defendant here knew that John Doe 2
13 was involved in this scheme and that he was being used in a
14 manner to track down John Doe 1.

15 THE COURT: All right.

16 Mr. Silverman.

17 MR. SILVERMAN: Your Honor, a couple of things.
18 First, we think that this entire issue can be resolved on the
19 legal question, which I don't think is in dispute between the
20 parties which is -- was the person -- is there an ability for
21 the Court to find by a preponderance that the person was
22 chosen on account of their disability. That's the *McCall*
23 case, and I'm quoting from 174 F.3d at 51. The correct test
24 calls for an examination of the individual victim's ability to
25 avoid the crime, rather than their vulnerability relative to

1 other potential victims of the same crime.

2 So first, legally, does anything with the
3 Government's proffer make him more unable to avoid the crime,
4 and the answer we think is clearly no. This is not like a
5 telemarketing scam where someone with reduced cognition is
6 more likely to be susceptible. Any citizen of the PRC, anyone
7 within the domain of the PRC Government would have been
8 susceptible to exactly this and the vulnerability did not
9 heighten the exposure to the offense or their chance at being
10 victimized. And so we think just based on that legal reason
11 alone, based on *McCall* that is inappropriate to apply the
12 vulnerable victim enhancement.

13 In addition, in terms of certain facts that have
14 been stated, I want to note that in Government's Exhibit 1020,
15 which we've now handed up to the Court, the photo I see in
16 that picture -- and I want to distinguish that picture from a
17 video that's referenced in the Government's letter -- this is
18 the picture that my client had, I see a man who's not, you
19 know, in his prime, but he's wearing a North Face
20 athletic-looking jacket, does not look to me like someone who
21 has trouble walking.

22 And what it says in that letter which I believe was
23 transmitted in 2016, is that he is in the United States and
24 leaving the United States, and there's no suggestion that he
25 was forced to be here. Quite the opposite, nor is from any

1 suggestion that he's having trouble traveling independently.
2 So this is the ex-ante knowledge that my client has. There is
3 a reference that the Government made to the post-arrest
4 statement.

5 The post-arrest statement is a garbled and confusing
6 statement and, in part, it very substantially confuses the
7 timelines of things. It's the kind of statement that someone
8 makes when they're not prepared by a lawyer in advance of
9 making a statement. And it confuses things that he knew
10 beforehand what things that he knew after the fact. The
11 timeline is very clearly mistaken because what happened -- and
12 I want to be very clear we are not arguing about what happened
13 with John Doe 2. And my definition is John Doe 1 being Xu
14 Jin, X-U-J-I-N, and John Doe 2 being the father.

15 THE COURT: Hold on. X-U and then separate word
16 J-I-N is John Doe 1. Okay. Go ahead.

17 MR. SILVERMAN: Right. And to be clear, I'm using
18 the name because it's already been in all of these public
19 filings. We're not in any way suggesting that what happened
20 here is okay. It's obviously quite terrible. But in terms of
21 what he knew in advance, what I see is a 2016 which is to say
22 I believe two years earlier a letter with someone who doesn't
23 look particularly vulnerable who's traveling independently in
24 the United States, that doesn't exhibit any ex-ante knowledge
25 that there would be a plan to coerce the person to come here.

1 And, of course, there's absolutely no allegation
2 that Mr. Zhu had any involvement in that part of the scheme in
3 terms of coercing the person to come here showing up at the
4 doorstep with John Doe 2. And so we don't think that there is
5 anything in the record that would suggest that ex-ante
6 knowledge. That's another reason that it's inappropriate to
7 apply the enhancement.

8 But, again, we think that the biggest issue is what
9 the Second Circuit in *McCall* calls the nexus and I note that
10 in probation's addendum -- I'm sorry, I don't -- I note that
11 in probation's addendum it says that the Government has
12 partially responded to the defense objections, and that
13 probation continues to support the enhancement because the
14 Government says that it can prove it.

15 But probation was implicitly conceding that what the
16 Government had provided did not fully address the defendant's
17 objections and in particular, I still don't hear any real
18 addressing of the nexus requirement or the point that the
19 victim's vulnerability -- and we don't have any reason to
20 dispute that at the time that he was brought here, without
21 Mr. Zhu's involvement, that he was sick and there was medical
22 personnel with him. But we dispute and we believe that it's
23 sufficient to avoid application of this guideline that there's
24 any nexus between that vulnerability and his selection as a
25 victim or his vulnerability to becoming a victim. So he's

1 not -- anyone in China could have been subject to the same
2 thing.

3 THE COURT: All right. Let me ask you a question,
4 though, about your argument on the timeline.

5 The Government has represented that this Exhibit
6 1020 reflects what your client sent to co-conspirator,
7 Mike McMahon in October 2016. And in the exhibit, it says,
8 Mr. Jason Zhu, who is your client, has sent me the following
9 detailed information on John Doe 1. And then the last entry
10 of these two pages of entries is a photo of John Doe 2 and his
11 wife and then some details about when they're leaving the
12 United States in October of 2016. The -- you say that your
13 client's post-arrest admission about knowing that there was
14 this plan to bring the father here is all scrambled.

15 Are you saying that basically it was only in
16 October 2016 that your client learned that the father was
17 already brought to the U.S. and then was returning back to
18 China in October? Is that what you're saying? because clearly
19 he knew something in October.

20 MR. SILVERMAN: Yes, right. So two things, Your
21 Honor. First, we believe that this is actually not legally
22 relevant because of the nexus issue which we think precludes
23 the guideline regardless of this.

24 But in addition --

25 THE COURT: When you say "nexus" --

1 MR. SILVERMAN: There's no nexus between the
2 vulnerability and the victim's selection or the victim's
3 status or his disability did not make him particularly
4 vulnerable to the crime. And that's citing the *McCall* case
5 because we think that China could have taken anybody from
6 China and forced them to come here, that by being an old and
7 disabled man that that did not make him particularly
8 susceptible. But separate and apart from that, what this 2016
9 letter shows is a picture of someone who does not look
10 particularly frail and it does not describe any plan to
11 forcibly bring him here and, in fact, says that he's already
12 here and is leaving. It describes something completely
13 different than what would happen two years later that are the
14 facts that underlie the Government's proposal for these
15 guidelines. So what this 2016 transmission to McMahon shows
16 is that, yes, John Doe 2 is a victim of stalking but --
17 well -- but not that he is known to be vulnerable or that
18 there's any effort to take advantage of his vulnerability and,
19 in fact, based on the contents of this letter and the picture
20 in it, I think there's reason for Mr. Zhu to not believe that
21 this is a vulnerable victim. That's not excusing the conduct
22 at all. It's just addressing the additional two levels for
23 allegedly targeting a vulnerable victim. But I just --

24 THE COURT: Can I stop you for one second, though.

25 MR. SILVERMAN: Yes, Your Honor.

1 THE COURT: I think your argument, though -- your
2 nexus argument is a little misplaced with respect to this
3 defendant because it's easy for me to find that some members
4 of the conspiracy, namely the Chinese Government or the
5 officials in China like Ji Hu or whoever else was acting back
6 there -- J-I, H-U -- did pick the father because he's old and
7 vulnerable, and he is the father, obviously, who could have
8 more moral suasion on his son because the evidence about the
9 father's age, which we actually haven't discussed but I'm
10 going to go back to the Government on that, and his
11 infirmities would be something known to the other conspirators
12 who did pick him out of all of the millions -- billions of
13 people in China, to go to see the son. So I think that there
14 is a nexus.

15 I think what I'm questioning, though, and what I
16 think is actually missing is that the defendant knew or should
17 have known that a victim of the offense was a vulnerable
18 victim. So I'm focused on your client as opposed to the
19 selection of the father because that to me, I think the
20 evidence is pretty clear, that he was selected for a myriad of
21 reasons, he's the father, he is old, the travel was difficult,
22 the Chinese Government certainly knew that he had to have aids
23 or that his health was an issue. So I don't think there's any
24 real argument that the conspirators or he was chosen for that
25 reason. But the requirement under the guidelines as to your

1 client is that he knew or should have known. And that's where
2 I'm thinking -- that's where I think there might be a
3 deficiency or a paucity of evidence.

4 MR. SILVERMAN: We agree, Your Honor. We don't see
5 the foreseeability that this was a vulnerable victim and --

6 THE COURT: Well, this is why the timeline matters.
7 It sounds to me like your argument based in part on Exhibit
8 1020, which the Government offers is that your client didn't
9 know about the father coming until October 2016 when he was
10 leaving. Now --

11 MR. SILVERMAN: Well, Your Honor, to be clear,
12 that's two separate trips. Right. So -- but that is, as I
13 understand it, not the same trip that happened. And I see the
14 Government nodding and they'll certainly want to correct me if
15 this is wrong. There was a separate trip two years later
16 where he was brought here with medical personnel by the
17 Chinese Government and that's when he was brought to the
18 person's door.

19 So in 2016, it appears from this letter, that that's
20 a separate trip by John Doe 2 to the United States. There's
21 absolutely no indication in that letter, Exhibit 1020, that it
22 was a coerced trip. In fact, it would suggest that the
23 conspirators did not know who was taking him back to the
24 airport, one of the questions to McMahon is who's taking him
25 back to the airport, and so this is a different episode

1 entirely.

2 And so not only is it a different episode, but based
3 on what happened in this letter, the Court is absolutely
4 right, there's no ability to -- for Mr. Zhu to see that this
5 would be a vulnerable victim. The picture that's included
6 doesn't look like a particularly vulnerable victim. It's not
7 someone in a wheelchair. It's not someone on a breathing
8 device or anything like that, or someone wearing an athletic
9 jacket; he's not young.

10 THE COURT: I'm pointing to the court reporter.
11 Every time I do that, you have to slow down.

12 MR. SILVERMAN: Oh, I apologize. Yes, Your Honor.
13 And so --

14 THE COURT: Let me also note that there's no
15 indication, at least in the exhibit, that your client knew the
16 father's age. Now, I think I've read somewhere he was 80 at
17 the time he came over. But what evidence is there that the
18 defendant -- let me turn to the Government. And you can clear
19 up this whole timeline thing. My memory is obviously
20 incorrect. I only remember the father coming once. But that
21 may be wrong. But certainly, October 2016 was at the start of
22 what turned out to be an almost three-year effort to try to
23 get John Doe 1 to go back to China.

24 October 2016 is really towards the beginning because
25 I think it started with the defendant going to China in

1 August 2016, correct?

2 MS. CHEN: You're correct, Your Honor, that the
3 conspiracy began in 2016. The only incident that the
4 Government would say pre-dated that was, I believe, Jane
5 Doe 1's sister testified that someone came to her door to
6 insist that John Doe 1 return to China. That happened earlier
7 in 2016.

8 But otherwise, you're correct, Your Honor, that the
9 timeline is that the defendant coming to the United States,
10 after having been in China and engaging Mike McMahon was
11 towards the beginning of the conspiracy. And I think we can
12 offer some clarity as to the two incidents that we've been
13 discussing. The first is correctly in October 2016 where John
14 Doe 2 and his wife were in the United States with John Doe 1
15 and his family. That incident is where the defendant asked
16 Michael McMahon to essentially follow and track John Doe 2 in
17 hopes of again, finding John Doe 1 and tracking down his home
18 residence which, as the evidence has shown, it was a priority
19 for the co-conspirators.

20 Then there was the April 2017 incident which is
21 where John Doe 2 was accompanied by a doctor from China and
22 made the essentially coerced trip from China to the United
23 States. Again, with the directive to convince John Doe 1 to
24 come back to China and otherwise, operation was to find out
25 John Doe 1's location.

1 THE COURT: So two things, though, the first trip
2 made by the parents, it's funny, I completely forgot about
3 that one.

4 Was that in the company of Chinese officials or that
5 was just a family visit?

6 MS. CHEN: There's no evidence that there were
7 Chinese Government officials accompanying John Doe 2 in
8 connection with the October 2016 trip. Nevertheless, they
9 were obviously aware that he was in the United States and had
10 been tracking him otherwise, because the defendant asked
11 McMahon to attempt to surveil him at the airport to locate
12 John Doe 1.

13 THE COURT: Right.

14 MS. CHEN: And that's the way that John Doe 2 is
15 used in October 2016. And certainly, that indicates that the
16 defendant was aware of John Doe 2's involvement or use to his
17 co-conspirators in the overall scheme as early as
18 October 2016.

19 THE COURT: That, I'm not sure of. I thought where
20 you were going to end that sentence was the relevance of this
21 exhibit is that the defendant certainly knew what John Doe 2
22 looked like, could, as you argue, assess that he's an elderly
23 man, although I have to agree with the defense on this, he
24 actually looks rather hail in this picture and he is wearing a
25 sport outdoor hiking-type jacket. I wouldn't characterize him

1 as frail by any stretch, but he certainly does look older.

2 But the relevance of this 2016 document or
3 communication is that the defendant knew what the father
4 looked like, had some idea that he was older, and -- but the
5 part I'm disagreeing with you on is I don't think he knew that
6 they were part of any scheme by the Chinese Government to
7 convince the defendant to return -- John Doe 1 to return home.
8 But he was -- the father became part of the scheme to try to
9 locate John Doe 1 because, in fact, Mr. Zhu was saying to
10 Mike McMahon, maybe you could follow them and figure out where
11 John Doe 1 lives.

12 But then going to the second visit, April 2017, it
13 seems to me that's during the period of time when there's no
14 evidence that the defendant here was actively involved in the
15 conspiracy, because there seems to me a gap, after
16 October 2016 or so, and then the defendant reappears -- or
17 November 8th, 2016, I think, is the last reference to
18 Mr. Zhu's involvement, and then he reappears again in the
19 evidence, at least, in May of 2018. And thereafter, he makes
20 a trip, I guess to China and he also obtains a photo of the
21 sister-in-law and her husband.

22 But it seems to me the April 2017 period is where
23 Mr. Zhu seems to be absent at least according to the evidence.
24 So what evidence do you have that he was aware, then, that the
25 father was used by Chinese Government? Perhaps then more in a

1 vulnerable state, one could argue, because he's another six
2 months older, something that would show that he actually knew
3 that the father was a vulnerable victim chosen to perpetrate
4 the crime.

5 MS. CHEN: Yes. To address your first point very
6 briefly, Your Honor. I think you are correct that the
7 Government's position is that Government's Exhibit 1020 does
8 show that the defendant knew of the defendant's -- or of John
9 Doe 2's age, rather. Certainly, the document includes
10 John Doe 1's date of birth, and he's certainly aware that
11 John Doe 2 is John Doe 1's father.

12 THE COURT: Wait. So how does he know the date of
13 birth?

14 MS. CHEN: John Doe 1's date of birth is on the
15 first page of Government exhibit. John Doe 1.

16 THE COURT: Oh, John Doe 1.

17 MS. CHEN: Yes, John Doe 1. And then certainly as
18 the father, I think it's reasonable to infer that he should --

19 THE COURT: Doing the math.

20 MS. CHEN: Exactly. Doing the -- understand the
21 approximate age of John Doe 2 based on that, as well as the,
22 obviously, physical picture of John Doe 2 in the exhibit, as
23 well.

24 But going to your point, Your Honor, about the
25 defendant's knowledge of the April 2017 incident, I think

1 there we would point to the post-arrest interview where
2 certainly while there's no evidence that the defendant was
3 personally involved in that operation and literally bringing
4 John Doe 2 to the United States. In his post-arrest
5 interview, he does say that he was aware that John Doe 2 was
6 brought to the United States to convince John Doe 1 to return
7 to China. So certainly, I think that's evidence that he was
8 in communication with his co-conspirators and understood that
9 this was part of the broader scheme, and certainly, the
10 defendant was reengaged in the conspiracy and there's evidence
11 of that, in May 2018, where he took the surveillance photos of
12 Jane Doe one's sister's home and shortly thereafter, returned
13 to China.

14 THE COURT: And this is where you argue that the
15 defendant's post-arrest has a garbled timeline and that, in
16 fact, you're representing that -- well, that he told you or
17 that he's saying, I should say, that he didn't know
18 contemporaneous with John Doe 2 being brought to the U.S.
19 which would have been April 2017, but he learned some time
20 thereafter?

21 MR. SILVERMAN: Yeah, I think that that's a fair
22 reading also of just the statement itself which is in the
23 record. And there's a 55-page transcript but we agree with
24 what the Court said about knowledge as to vulnerability or
25 disability and that really makes the post-arrest statement

1 irrelevant in terms of the applicability of the guideline
2 because even if the age is known, the question is do you know
3 that this is a vulnerable person and while it's clearly not a
4 young person in the picture, it doesn't look like a sick
5 person. I would be very -- it doesn't look, frankly, like
6 someone who's 79 years old in that pictures. And so -- and it
7 certainly doesn't look like a vulnerable person. In fact, the
8 contents of the letter says that the person is independently
9 traveling in the United States, which would seem to suggest
10 that the person is not vulnerable or disabled. And so there's
11 just no evidence of ex-ante knowledge of that fact.

12 THE COURT: All right. So this is a close call, I
13 would say, certainly, as to this defendant. Because again,
14 I'm focusing on what the requirement is under 3A1.1(b) and it
15 does require that the defendant knew or at least should have
16 known that the victim was vulnerable. Obviously, the
17 definition of vulnerable is a bit illusive. There are very
18 healthy 79-year-old and then there are very infirmed
19 79-year-old. Age is obviously not the only consideration.
20 But I think here as to this defendant, at least, I'm not going
21 to apply the vulnerable victim enhancement. I just don't find
22 that there's really enough to show that this defendant knew or
23 should have known that the victim was infirmed and here, of
24 course, we're talking about John Doe 2.

25 I appreciate the Government's arguments and they

1 certainly have some common sense appeal. But I just think
2 it's really increasing the guidelines by quite a bit, two
3 levels, based on an extremely thin record as to this defendant
4 and what he knew, when. There's obviously no evidence and
5 it's clear that he wasn't involved in the decision to bring
6 the father back the second time or I should say bring the
7 father in April of 2017 to try to coerce the son into going
8 back to China. So I just think it would be inappropriate to
9 apply that enhancement to this defendant based on these facts.
10 So I'm not going to apply the two-level enhancement, which
11 reduces the total offense level to 23 and then the guidelines
12 range down to 46 to 57 months in Criminal History Category I.
13 As we discussed before, it doesn't affect the lack of
14 application of the Zero-Point Offender unless, Mr. Silverman,
15 you have an argument about the crimes not involving a threat
16 of harm.

17 MR. SILVERMAN: Well, I think, Your Honor, the way
18 to analyze it, and both parties used this analysis when
19 addressing the question about multiple conspiracies, is what
20 was reasonably foreseeable as part of the conspiracy. And I
21 assume what the Government is talking about with threats is
22 the instant with the staple gun which was at the time when
23 Mr. Zhu was not part of the conspiracy when he was certainly
24 not present, it's completely unlike the one time that he
25 accompanied these individuals --

1 THE COURT: So we're clear you're talking about
2 using the staple gun to put a flier on the door and that's
3 later, not anyone threatening someone with a staple gun.

4 MR. SILVERMAN: I assumed -- the Government
5 mentioned credible threats so maybe the Government -- I'm not
6 sure if I'm addressing which threat the Government thinks is
7 the credible threat that precludes the enhancement of the
8 reduction.

9 But what I'm saying is that I'm not aware of any
10 evidence that such direct threats were foreseeable within the
11 scope of what Mr. Zhu knew and so, therefore, we believe that
12 this Zero-Point Offender two-level reduction is warranted.

13 THE COURT: Okay. Someone can point me perhaps to
14 the Zero-Point Offender provision that we're talking about.
15 I'm guessing that it says something like the crime of
16 conviction involved the credible threat of harm.

17 I'm not -- and I know you're talking about a
18 different knowledge or foreseeability issue. But on this one
19 I would side with the Government, that I don't think he
20 gets -- and this is the first time I think we're arguing about
21 it, the Zero-Point Offender reduction, because the crime -- I
22 think it was reasonably foreseeable to him that there would be
23 some use of coercion and harassment because -- in order to get
24 Mr. Doe 1 to return to China.

25 I think the defendant in a way is probably more

1 aware of the tactics used by the Chinese Government than
2 others, even. So I don't think -- especially because he
3 seemed to be aware that John Doe 1 was wanted by the
4 Government for prosecution or that they wanted to do something
5 to him. So I don't think Mr. Zhu was under any illusion that
6 they were just going to ask nicely and say, pretty, please,
7 because obviously they brought over his father to try to
8 convince him and then they tracked him down at his home and
9 there was a private investigator hired to locate him and there
10 were all of these other efforts made including getting
11 information on the sister-in-law and the inference is that
12 when Mr. Zhu did that in May of 2018, he communicated that
13 information to the Chinese Government who then started
14 flooding them with pretty hostile and threatening mailings.

15 I think some showing the family members sitting on
16 the couch looking terrified. So I understand what you're
17 saying about foreseeability here. But I think there's enough
18 here to find that Mr. Zhu knew or foresaw that there were
19 going to be some strong armed tactics used by the Chinese
20 Government to persuade, I would say probably coerce
21 Mr. John Doe 1 to go back and face some kind of negative
22 consequences meted out by the Chinese Government. I don't
23 think he was naive about that. So I think that he had a
24 pretty good idea when he was getting this information that the
25 Chinese Government was going to do whatever they could to try

1 to get Mr. John Doe back to China.

2 So I'm not going to apply the Zero-Point Offender
3 benefit. But I have reduced the guidelines by two levels to
4 23 for Counts Three and Four. The guidelines range is 47 to
5 57 months in Criminal History Category I.

6 MS. CHEN: Your Honor, I think it's 46 to 57.

7 THE COURT: What did I say?

8 MR. SILVERMAN: 43, Your Honor.

9 THE COURT: Yup, 46. Sorry, I misread my own notes.
10 Forty-six.

11 Now, the other argument that's been alluded to is
12 the defense objection to what it characterizes as probation
13 breaking down the stalking conspiracy charged in Count Three
14 into multiple offenses and then applying a grouping analysis
15 to arrive at a total offense level for Counts Three and Four.

16 Now, you don't cite any authority for your argument.
17 You do rely, I think, on co-conspirator McMahon's argument.
18 For what it's worth he cites the case of *Robles*, R-O-B-L-E-S,
19 562 F.3d 451, but I read that submission and the case, and I
20 think it's miscited or misapplied because *Robles* says quite
21 the contrary. It pretty firmly stands for the proposition
22 that offenses that are alleged to be committed as part of the
23 conspiracy, though they have to be sufficiently proven to have
24 occurred, can be considered under 1B1.2(D), which is the
25 guideline provision that's being applied here by the probation

1 department.

2 I think the case law is clearly and certainly was
3 affirmed in the Fourth Circuit decision in *U.S. versus*
4 *Mitchell* just this year or last year, 2024. That's reported
5 at 120 F.4th 1233 and, like I said, that comes out of the
6 Fourth Circuit. And there they clearly address this issue and
7 affirmed that under guideline 1B1.2(d), a conviction on a
8 count charging a conspiracy to commit more than one offense
9 shall be treated as if the defendant had been convicted on a
10 separate count of conspiracy for each offense that the
11 defendant conspired to commit. And they also make clear that
12 it's not necessary for the separate crimes committed as part
13 of the conspiracy to be identified in the indictment. There
14 is, of course, the Application Note that *Robles* cited which
15 does caution the Court that there has to be sufficient
16 evidence that the criminal acts occurred but here, there is,
17 because there was a trial and I sat through the trial and I
18 can say that there's certainly enough evidence that all of the
19 acts that the guidelines calculation is based on were shown to
20 have occurred.

21 And those could each be counted as separate acts of
22 stalking for purposes of the guidelines calculation.

23 I do note that the jury obviously returned a verdict
24 against the defendant on the stalking, the substantive
25 stalking charge. But that charge in the indictment, as I

1 recall, did not identify the specific acts or wasn't broken
2 down into separate offenses but was a course of conduct that
3 was charged substantively. But again, having not only sat
4 through the trial but found post-trial that there was
5 sufficient evidence to show all these acts occurred, I do
6 think that there's enough to apply 1B1.2(d) and count each of
7 these acts that were carried out as part of the conspiracy as
8 separate offenses and then have them grouped together for the
9 guidelines calculation.

10 I don't think you need to be heard further on that,
11 Mr. Silverman. So let's move on to the next one.

12 MS. CHEN: Your Honor, I'm sorry to interrupt.

13 THE COURT: Oh, yes, please.

14 MS. CHEN: Just before we move one from this
15 particular guideline, I would nest that in Application Note
16 Four, there is the heightened standard that the Court must
17 find beyond a reasonable doubt with respect to what Your Honor
18 was just talking about. I just want to clarify that that is,
19 in fact, the standard of which the Court is using.

20 THE COURT: Yes. I appreciate that, actually. I do
21 find beyond a reasonable doubt. And again, I've had the
22 benefit of hearing all of the evidence and then ruling on it
23 even post-trial. Obviously, we don't know exactly what the
24 jury found beyond a reasonable doubt other than that the
25 stalking charge was proved, but they didn't make findings as a

1 separate acts. But I do find beyond a reasonable doubt that
2 all of those separate offenses or instances of stalking were
3 actually proved beyond a reasonable doubt. Okay. Thank you.

4 Now, turning to the pattern enhancement that was
5 applied under guideline 2A6.2(b)(1) capital E, so small B
6 capital E. The defense objects to that enhancement which
7 applies if the offense involved a pattern of activity
8 involving stalking, threatening, harassing, or assaulting the
9 same victim. And the argument the defense makes is that the
10 presentence report doesn't state multiple instances of the
11 defendant going to the victim's home. I'm going to just
12 dispense with this argument or resolve it without hearing more
13 about it. I think that argument does miss the point. The
14 enhancement doesn't require the defendant himself to have been
15 the one who went to the victim's home and did the physical
16 stalking. Rather, the stalking offense had to quote, unquote,
17 "involve" such a pattern of activity. And as the Government
18 details on Page 13 of their sentencing letter, the evidence
19 in this case clearly establishes a pattern of stalking
20 activity and, in fact, I just found beyond a reasonable doubt
21 that that is the case. And that the stalking activity was all
22 directed at John Doe 1 and Jane Does 1 and 2 over the course
23 of three years as part of a -- and I'm quoting the Government
24 -- "multipronged, multi-phased scheme to locate and compel
25 John Doe 1 and Jane Doe 1 to return to the PRC" or the

1 People's Republic of China. So I'm not accepting that
2 objection. The pattern enhancement will still apply.

3 And then finally, the denial of the acceptance of
4 responsibility points. Mr. Silverman, you've raised an
5 objection based on the fact that even though the defendant
6 went to trial and put the Government to its proof, he did
7 admit before or at the time of his arrest, I should say, to
8 doing things at the behest of the officials of the PRC
9 Government and feeling bad about that because he knows its
10 illegal. I'm quoting roughly, from your submission. And then
11 you also point out that he made, I think, a fuller confession
12 at the time of his probation department interview. Oh, sorry,
13 that's what you said about his probation department interview.
14 At the time he was arrested, he told the agents that he knew
15 that Ji Hu worked for the Chinese Government -- yeah, I think
16 that's all he said roughly.

17 So you can argue this more, but I'm not going to
18 grant him the two-level reduction, and I can explain why. But
19 feel free to argue further, if you'd like.

20 MR. SILVERMAN: We rest on our papers on this point,
21 Your Honor.

22 THE COURT: Okay. So the situation that the
23 defendant is in is almost precisely the one described in
24 Application Note 2 to section 3E1.1, where it indicates that
25 the two-level reduction should not be applied. So Application

1 Note 2 makes clear that the -- and I'm quoting, "The
2 adjustment is not intended to apply to a defendant who puts
3 the Government to its burden of proof at trial by denying the
4 essential factual element of guilt is convicted and only then
5 admits guilt and expresses remorse," end quote.

6 And this is precisely what Mr. Zhu did, in part. I
7 think the fact that he initially acknowledged that he knew
8 that Hu Ji worked for the Chinese Government was negated by
9 his subsequent decision to go to trial and put the Government
10 to its proof. I'll also note that the exceptions discussed in
11 Application Note 2, for example, a defendant going to trial
12 simply to preserve an issue not related to factual guilt such
13 as a Constitutional challenge to the statute or to the
14 applicability of the statute to the defendant's conduct, do
15 not apply here.

16 Now, I know you've argued that the defendant
17 actually did not want to go to trial, but that his lawyer
18 incompetently did so on his behalf. You are front and center
19 arguing ineffective assistance. I recognize that. It was,
20 and I'll acknowledge, an issue that came up during the trial
21 itself and led to your appointment post-trial, Mr. Silverman.
22 But that's not something that I can consider in this
23 proceeding and certainly not without the benefit of Mr. Tung,
24 T-U-N-G, the former counsel's account. But I do want to ask
25 you a question, and I don't want to go too far down this road.

1 But when you said the defendant wanted to plead
2 guilty, are you saying he would have admitted to both the
3 Section 951 and the stalking crimes? And if you don't want to
4 say that --

5 MR. SILVERMAN: Your Honor, to answer the
6 question -- I mean, just to answer the question directly, I
7 don't think this is privileged, there was a plea offer on the
8 table. And, you know, I will say and I -- we acknowledge in
9 our letter that this is not the time to adjudicate 2255
10 matters. You know, I think that he was not professionally
11 advised. I think he wanted to accept responsibility. I think
12 that he would have if he had been competently represented. We
13 appreciate the Court's ruling on how that does or does not
14 impact the guidelines -- I'm sorry.

15 We appreciate the Court's ruling on how that does or
16 does not affect the guidelines, but, you know, I think that
17 this would have been very different if he had been represented
18 differently from the beginning for a number of reasons,
19 including other matters that are not in the record and which I
20 won't raise unless the Court wants to further inquire.

21 THE COURT: That's fine. I probably shouldn't have
22 asked that question.

23 You do acknowledge that I cannot address the -- what
24 is an ineffective assistance argument right now in this
25 context. So I am going to deny the objection about the

1 acceptance points not being granted to Mr. Zhu. Here's what
2 we are going to do for the sake of our interpreter and our
3 court reporter. I'm going to address one more objection, the
4 minor role adjustment that's been raised, and then we'll take
5 a break.

6 You've argued, Mr. Silverman, for a minor role
7 adjustment. We've all assumed you mean the two-level minor
8 role adjustment based on what you say is Mr. Zhu's lack of
9 knowledge or understanding of the scope and structure of the
10 enterprise and the activities of others in the conspiracy.
11 The conspiracy did last for a little over three years from
12 September 2016 to December 2019. And as the Government
13 describes, it was multi-phased and multipronged, and as the
14 evidence showed, involved different players who didn't -- or
15 conspirators who didn't interact with each other. But there
16 was certainly a hub in this enterprise or in this conspiracy
17 which emanated out of the Chinese Government.

18 I'm going to deny this, largely for the reason that
19 the Government has argued. But that doesn't mean you cannot
20 argue that I think more appropriately as a basis for a
21 downward variance based on what Mr. Zhu knew or intended or
22 whether he was naive in some way about the full scope of what
23 was happening and the harm he was causing. That's an argument
24 you can make after the break.

25 But I think it's a technical matter. I can't give

1 him a minor role reduction because he played a pivotal role in
2 both conspiracies, the stalking and the 951, because he was
3 the connection between the Chinese Government, the Chinese
4 agents, and the U.S. co-conspirators like Mr. McMahon, who
5 carried out some of the stalking activity. The defendant
6 traveled to China as part of the conspiracy multiple times and
7 met with the Chinese Government agents. The defendant also
8 strategized about locating John Doe 1's address, which was in
9 Exhibit 1025 that we just discussed, or is it 1020?

10 MS. CHEN: 1020.

11 THE COURT: 1020 which we just discussed a moment
12 ago.

13 And so his role was not substantially less than both
14 of his co-conspirators. It was just different. And it was
15 quite important and one only that he could fulfill. Arguably,
16 his role might have been more important and indispensable or
17 irreplaceable because he was the Chinese speaker, the Chinese
18 citizen who, as the Government points out, could travel easily
19 back and forth to meet with the Chinese agents.

20 You seem like you want to say something.

21 MR. SILVERMAN: Your Honor, I'll just put on the
22 record, because this is responding to what the Court just said
23 and also the argument in the Government's letter. And the
24 Court is right, we did ask for a two-level reduction, not the
25 four-level reduction. What has just been described relates to

1 the FARA offenses for which no guidelines are calculated. But
2 for the stalking offenses the question is what is the role
3 with respect to co-conspirators and with respect to an
4 ordinary stalker.

5 And I understand everything the Court has said about
6 arguments for a variance and the guidelines overstating a
7 particular defendant's involvement in a certain offense. But
8 certainly, the standard person to whom the stalking guidelines
9 are applied is the person who put the stalking into effect,
10 who created the stalking. And this is not a person -- Mr. Zhu
11 is not a person who created what was at play here. And that
12 puts him in a very different position than your average person
13 who is convicted of stalking.

14 And so we think if you looked at him compared to
15 your average stalker who personally decides that the stalking
16 will occur, makes that decision, puts it into effect
17 personally, has multiple interactions with a victim, in that
18 comparison, that this is a reduced role from a typical
19 stalking case, and then with respect to what we agree is a
20 but-for part of the conspiracy, as we point out in our papers,
21 you know, a courier, an internal courier is a but-for part of
22 that conspiracy. We think that the Government correctly -- I
23 think it's at Page 21 or 22 of the letter describes the
24 Chinese Government as recruiting people like Mr. Zhu. And so
25 even within the scope of FARA, we think that that does speak

1 to role, and we certainly intend to address that as a 3553(a)
2 factor.

3 But both in terms of comparison with other people
4 who are stalkers, and we're really talking about the stalking
5 guidelines for Counts Three and Four when we're talking about
6 the minor role reduction, not the FARA, and if you look within
7 the role of the conspiracy, we do think it's appropriate, so I
8 appreciate the chance to put that on the record.

9 Thank you, Your Honor.

10 THE COURT: Okay. I appreciate your thoughts, but
11 on this one, I strongly disagree with you.

12 I think with respect to the stalking, Mr. Zhu played
13 a pivotal vital role. He physically didn't go to the home or
14 look for the people or surveil them, but he provided the
15 necessary information and direction on what to do. He gave
16 the biographical data that -- I don't know if it's a Social
17 Security number or a Chinese identification number, but he
18 provided the information that set forth, actually, in 1020, so
19 that other members of the conspiracy could carry out the
20 stalking. They had different roles, yes. One was at the
21 brain stem, if you will. I realized there was someone behind
22 him. But he was the one actually providing the vital
23 information. So it's different than but-for. Well, maybe --
24 it's actually but-for is not a good analogy here because in
25 theory everybody is a but-for cause of a conspiracy being

1 executed. But you're arguing, I guess, that he's fungible,
2 the Chinese Government could have picked anybody. But they
3 didn't pick anybody, they picked him. He agreed to do it.
4 The question is what did he agree to do and what did he
5 actually do to further this conspiracy? And he did as much as
6 everybody else, if not a more important role.

7 So let me just not focus on what I said -- or let me
8 not emphasize what I said before. Just taking what he did, he
9 played an equally valuable role as maybe a better way of
10 saying it as the other conspirators, he just played a
11 different role. But he gave them the information they needed
12 to do the stalking and he also conveyed to them who they
13 needed to stalk and that they needed to do it. So in some
14 ways, he gave the commands or conveyed the commands.
15 Admittedly, he was a messenger and not the architect.

16 But for all the reasons that I've discussed, I'm not
17 going to give him a minor role reduction. As you correctly
18 point out, this relates only to Counts Three and Four, and you
19 can argue under the sentencing factors that I should consider
20 the role that he did play in this overall much broader scheme,
21 akin to a drug courier in a large or vast drug trafficking or
22 smuggling operation.

23 Okay. As promised, everyone, let's take a break.
24 Come back at -- how much time do you want? Every 15 or 10?

25 MR. SILVERMAN: Ten is fine.

1 THE COURT: Ten is fine? How are you doing, Ms. Wu?
2 Ten minutes is okay?

3 THE INTERPRETER: I'm fine with that.

4 THE COURT: Okay. Let's come back at 20 of 12:00.
5 Thanks, everyone.

6 (A recess was taken.)

7 THE COURT: Okay. So let's go back on the record,
8 everybody.

9 Let me just recap, then, the total offense level is
10 23 for Counts One and -- sorry, Three and Four, and a
11 guidelines range of 46 to 57 in Criminal History Category I
12 applies as my starting point for those counts, and then the
13 guidelines factors under 3553(a) governed for Counts One and
14 Two.

15 All right. Are any other unresolved objections to
16 the presentence report or addendum that I need to address,
17 Mr. Silverman?

18 MR. SILVERMAN: No, Your Honor. Thank you. No,
19 Your Honor. I would just note -- no, there are no unresolved
20 objections.

21 THE COURT: I'll note, and obviously the parties are
22 aware, that there were a lot of objections to factual
23 statements in the objections that were filed with the
24 probation department. Hold on one second. Hold on, folks.
25 I'm just trying to get back up on the real time.

1 But it does seem like the probation department did a
2 yeoman's job addressing all of them. So I think they seem to
3 have been largely resolved.

4 Okay. So I'm going to adopt the presentence report
5 and addendum with the exception of that one change regarding
6 the vulnerable victim enhancement, okay.

7 MR. SILVERMAN: Thank you, Your Honor.

8 THE COURT: All right. So now let's turn to the
9 3553(a) factors.

10 Mr. Silverman, I'm assuming you want to be heard
11 beyond your written submission; is that right?

12 MR. SILVERMAN: Thank you, Your Honor. Yes.

13 THE COURT: Okay. Let me just say this, and I'm
14 sure you already have this in mind, you don't need to repeat
15 everything in your sentencing submission, but emphasize
16 whatever you think is most important.

17 MR. SILVERMAN: Thank you, Your Honor. And Mr. Zhu
18 himself would like to speak --

19 THE COURT: Of course.

20 MR. SILVERMAN: -- and address, in particular, how
21 sorry he felt for the victims when he read the statements in
22 the PSR that they made. It's possible after a trial to show
23 remorse without accepting responsibility, but he has both
24 showed remorse and accepted responsibility. That is not
25 without consequence. And it's unusual and we think it's

1 noteworthy. He acknowledges everything that he did, that it
2 was harmful and that it was wrong.

3 He faces very substantial punishments beyond
4 incarceration. The Government -- I just want to address some
5 points they make in their letter. They say that the Second
6 Circuit discourages considering deportation. We don't think
7 that -- we think that would be a legal error to agree with
8 that. That's citing *Duke* which is a summary order from
9 before. *Booker*, it's about departures from the guidelines not
10 the 3553(a) factors.

11 We cite Supreme Court cases, that deportation is
12 punishment, and the collateral consequences here are not just
13 deportation. They're really quite substantial. He won't be
14 able to live with his son. He won't be able to see his
15 grandchildren. We used the analogy to the Tang dynasty poem
16 that they won't even be looking at the same moon, they won't
17 be really in the same world anymore. He'll lose his Social
18 Security, Social Security is discontinued. He'll lose his
19 Medicare when he's at the age of becoming a heavy Medicare
20 consumer. And these older cases that the Government raises
21 the disparity between citizen and non-citizen sentences and
22 white-collar cases and this will count by BOP computation as a
23 white-collar case, was not nearly as significant.

24 The First Step Act makes it difficult to figure out
25 how much a citizen white-collar defendant, like one of the

1 codefendants here, will spend in jail. But -- and it depends
2 on the person, and it's really hard to figure out. But
3 60 percent is not a frivolous guess versus 85 percent. So
4 that's 25 percent of the sentence imposed, but it's actually a
5 41 percent increase in the amount of time that Mr. Zhu will
6 serve on the same sentence, if the same sentence were imposed
7 on him and Mr. McMahon. And we don't think that would be
8 appropriate for other reasons but just in terms of putting
9 like in like, the difference in the contemporary world and
10 it's very offender -- offender-specific, and BOP has not made
11 it easy to figure out with a simple formula how this operates.
12 But the difference is really quite significant and we think
13 that that's important. But this is someone who will face very
14 significant punishments beyond whatever term of incarceration
15 is imposed, and those punishments go a long way towards
16 general deterrence.

17 We also note that he was on home confinement for 15
18 months. He lives in his son's basement. I don't believe that
19 one of the other codefendants was on home confinement at all.
20 It's hard for me to tell from the public docket sheet, the
21 bond terms. But that does not appear to have been the case.
22 That's a significant amount of punishment. Certainly, COVID
23 made everything last longer. But this case and the pretrial
24 restrictions have been going on for quite a long time already
25 and we ask the Court to take that into effect.

1 I do think at the risk of running into something the
2 Court might disagree with, I do think that it needs to be said
3 that the state of mind here, the culpability, the
4 blameworthiness is different from a lot of stalking cases
5 where there's this obsessive quality of personally trying to
6 torture and destroy the life of former intimate partner or
7 something like that. And that's just entirely absent here.
8 And that doesn't make it fine conduct at all. But that's a
9 level of aggravatedness that we think is factored into the
10 stalking guidelines that does not exist here at all.

11 And we also think that it's relevant that Mr. Zhu,
12 as the Court said, is fungible. We said he was disposable and
13 disposed of. You know, he's a pawn. That's certainly not an
14 unusual kind of defendant. But we think that that's something
15 to be kept in mind here. The man's been a pawn his whole
16 life. He's been at, you know, the whirlwinds of his country
17 of origin's politics his entire life.

18 And one thing I want to address, it wasn't in the
19 Government's letter, but I saw it came up at the trial, that
20 he goes to Wuhan and he takes pictures with the mayor of
21 Wuhan, things like that. I think it's very important to note
22 that from his perspective that has nothing to do with showing
23 support from the Communist parties. Like, he goes back to
24 Wuhan and he sees a city that was in deep third-world poverty
25 when he was a child, now as a modern metropolis. And the

1 mayors -- you know, I think 10 percent of -- I see different
2 estimates on the number of members of the Chinese Communist
3 Party, is it 80 million people or is it 90 million people,
4 right? It is not confined to a small group of people in
5 Beijing. And so when he goes back to China and sees, you
6 know, there's a convention with hundreds of people, older
7 people from around the world returning to Wuhan and feted by
8 the local Government, I really don't think that that alone
9 indicates desire to support authoritarian goals abroad.

10 He was recruited under false pretenses. By the time
11 it was going on, he knew what was happening, but we think that
12 it's noteworthy that he was recruited under false pretenses.
13 And, in fact, just last night, I was going through WeChat,
14 WeChat being the Chinese equivalent of both Facebook and
15 Twitter and Instagram and you name it, it's a whole universe
16 of information. If you look at John Doe 1, the universe of
17 information is that this is a -- I won't even say it. I don't
18 want us to be -- thought to be disparaging someone. But the
19 information universe is entirely different. And I think that
20 it is just a reality that even people who are skeptical of the
21 PRC and the CCP who live in that information universe live in
22 a different information universe than we do. And that it
23 affects how people perceive things. And I think that that's
24 increasingly a reality of the world.

25 But this is the information universe of pretty much

1 all native mainland Chinese readers and Mandarin speakers.
2 And it's in many ways, an alternate reality to what the
3 Government would portray here. But that's the information
4 universe that a lot of people live in in Sunset Park in
5 Elmhurst and Flushing, and that is part of the reality of the
6 backdrop here to the involvement. But there's no question
7 that he knew that when Hu -- Mr. Hu, H-U, was here, that he
8 was a Chinese Government official, I think Government official
9 said that he was here essentially as a junket, and that got
10 translated, he volunteered that information to the FBI when he
11 was arrested.

12 I don't think the need for specific deterrence are
13 as strong as for most people who put the Government to its
14 proof at trial for reasons that we've raised which is that I
15 do believe he was not well counseled and did not understand
16 certain things. There will be a time and a place when there's
17 a record of that, and it's much more extensive than what we've
18 put in the record here. But I think that it's clear that he
19 confessed when he was arrested. He confessed again. He
20 immediately, following trial, authorized counsel to
21 acknowledge his guilt in a written submission, and he will
22 speak to the Court today. And he also wrote a letter to the
23 Court attached to our January 3 filing. And that we think
24 goes to specific deterrence.

25 Ultimately, we have an aging person. The cases that

1 the Government cites about medical stuff all pre-date the
2 Inspector General's report that we quote about the inability
3 of BOP effectively to manage aging inmates. The time that he
4 spends in jail will be more difficult. He'll obviously be at
5 a higher security designation than he would otherwise qualify
6 for, but it'll also just be more difficult. The examples that
7 we used repeat just one thing in a sense. It might -- but I
8 think it's significant is that you never know when you're bunk
9 mate is not going to let you take the bottom bunk, right? And
10 for older people, these kinds of small things in jail become
11 really quite agonizing, and it makes each day much harder than
12 it otherwise would be.

13 I was -- I was moved by his family's letters. I
14 think that they show a person who is a true first-time
15 offender, something that is not computed into the guidelines,
16 and so which we ask the Court to take into account as a
17 3553(a) matter, and we think that a period of over one year in
18 prison we ask for 18 months, coupled with all of the very
19 significant collateral consequences, will serve very
20 substantial general deterrence and will punish the conduct
21 here.

22 And unless the Court has any more questions, we'll
23 otherwise rest on our papers.

24 THE COURT: I do have one question for you.

25 The Government raises a concern with respect to

1 recidivism and the potential for that that if Mr. Zhu is
2 deported which seems to be all but certain, and has to live in
3 China under difficult circumstances that you mentioned, for
4 example, not having the benefit of his Social Security or
5 Medicare, and I would also add, perhaps facing some potential
6 retribution from the Government, based on his admission about
7 his own wrongdoing at their request.

8 What assurance can I have that he won't resort to
9 working for the Government again in some similar capacity in
10 order to, as he did here, make some money? because then his
11 financial circumstances will probably be more dire.

12 MR. SILVERMAN: Well, Your Honor, I think the
13 Court's first point about how he may be on the outs with the
14 Government would preclude that. And I think that the
15 example -- this is not a man who knows how to type. So the
16 example that the Government uses in footnote 11 of its letter
17 of a younger codefendant using a computer, I don't -- I
18 honestly don't understand -- I don't believe Mr. Zhu has the
19 capability to do that. His English language skills are de
20 minimis, and certainly, there's no need to use him based on
21 knowledge of English, which is -- which is pretty limited.

22 So I don't really know what usefulness he would
23 have, even if people wanted to use him. His usefulness to
24 them here was that he was able to be physically in the United
25 States. And as the Court said it, he conveyed information.

1 In fact, that's one very subtle but I think important
2 difference on how the Government and the defense presents
3 certain information.

4 The Government's letter describes Mr. Zhu as, quote,
5 gave him directions, referring to Mr. McMahon. And we would
6 describe that as relayed directions. And while that's very
7 subtle, I think it's significant because it shows who's
8 creating the instructions and what the person's role is and
9 what their usefulness is, and I don't see him having any
10 usefulness at all. I think he will be disposed of and simply
11 without use.

12 THE COURT: All right. Thank you very much,
13 Mr. Silverman.

14 I'll hear from the Government if you'd like to be
15 heard further beyond your written submission.

16 MS. CHEN: Of course, Your Honor.

17 I just want to make sure that the defendant has an
18 opportunity to speak, as well.

19 THE COURT: Yeah, I usually have him go last.

20 MS. CHEN: Understood, Your Honor.

21 So I just want to address a couple of points. I'm
22 not going to reiterate everything that's in the Government's
23 submission. But I do want to touch upon some things not
24 addressed in the 3553 factors first starting with the
25 defendant's history and background. And certainly, in the

1 defendant's submission, there's a lot of discussion about the
2 defendant's history in China and his experience and the
3 cultural evolution and otherwise. And while the defendant
4 argue that this requires leniency from the Court, the
5 Government would argue that this actually informed the
6 defendant's knowledge of what the Chinese Government was
7 capable of and the far reaches of how -- truly how far the
8 Chinese Government would go and the harm that they would
9 instill on their own people and others.

10 And for that reason, Your Honor, the defendant in
11 some ways is more culpable because he understood and had
12 first-hand experience as to the dangers and the harms that
13 could ultimately befall the victims in this case, whom he and
14 his co-conspirators were engaged in threatening, stalking, and
15 intimidating for years and years. So that's one point I
16 wanted to raise, Your Honor.

17 I think the other is that in this particular case,
18 the defendant was in a very unique situation to give the
19 Chinese Government a foothold in the United States, given his
20 ability to be here physically, as well as he does have some
21 English skills and some contacts certainly in the Eastern
22 District of New York and the ability to reach out to a
23 translator to ultimately hire Codefendant Michael McMahon,
24 reach out to an attorney who actually testified at trial.
25 Those are contacts that he had and he very much engaged in and

1 used that the Chinese Government wanted and he agreed to
2 provide. And so I think it's really understating the
3 defendant's abilities when the defense says that he's a man
4 who does not know how to type. We saw WeChat communications
5 between him and the translator he engaged in. I think it
6 severely undercuts the defendant's conduct and his abilities
7 in this case.

8 I want to touch briefly also on the collateral
9 consequences that were raised. And I think really the
10 argument there kind of forgets the heart of the crime of what
11 the defendant engaged in, both in the 951 charges in Count One
12 and Two, as well as Counts Three and Four in the stalking
13 charges that he's going to lose his Social Security and that
14 he's going to be removed from the United States is frankly a
15 natural consequence of engaging as an agent without
16 registering in the United States on behalf of the Chinese
17 Government here. That he seeks now to maintain benefits
18 provided by his status here and the United States Government
19 while at the same time being convicted of these particular
20 crimes is something Your Honor should not quite take
21 seriously.

22 I also want to raise, Your Honor, of course, the
23 defendant's age is what it is. He's 68 years old now. But
24 this is not a situation where the defendant's being convicted
25 of crimes that he committed in his youth. He committed these

1 crimes when he was 59 through 61 years old. He was already an
2 experienced individual. He knew kind of what he was getting
3 himself into in the grand scheme, given his experience in
4 China and his time living in the United States. He had
5 developed a certain life here that allowed him to engage in
6 the conduct that he did engage in. And so while certainly
7 incarceration could be more difficult, it's not the situation
8 where the imprisonment is for a crime that is so divorced from
9 the person who committed it. He is very much the same person
10 who had the same conditions who was about the same age when he
11 committed the crime. It's a little bit different in that
12 sense when we're talking often about other defendants who are
13 70s, 80s who are being held accountable for crimes committed
14 in their youth.

15 I also want to talk a little bit about deterrence,
16 both general and specific, as well as respect for the law,
17 which, of course, the Court should be considering under 3553.
18 And I think with respect to general deterrence, the Government
19 has a very different view as to who that particular factor is
20 pointed at. And, for example, the defense raises that on
21 WeChat, it's a different world where there's different
22 information and individuals in Sunset Park and other immigrant
23 communities within this district have access to that
24 information. I think that's entirely correct, Your Honor.
25 And that's precisely the target audience for general

1 deterrence.

2 As we've seen, during the course of this conspiracy,
3 the Chinese Government and those similarly situated in China
4 often are trying to engage those who are in the United States
5 to commit this scheme. And they need that buy-in, they need
6 that agreement from those in the United States to commit these
7 harms, and that's very much what the defendant did here. And
8 it is those people that the Court should be considering when
9 we're talking about general deterrence. It is those people
10 who may be reached out to or recruited as the defense says,
11 who will need to think about whether or not they want to
12 engage with the Chinese Government, and a serious sentence
13 here will show that that is important and that there will be
14 consequences and they are not quote, "minor roles or cogs or
15 just pawns," that they very much have a choice to make to
16 engage in this type of conspiracy and to agree to act on the
17 Chinese Government. And without that, I think, Your Honor,
18 those similarly situated may very well believe in very similar
19 terms that they are just a small piece of the puzzle and they
20 are not important in the grand scheme and that there will not
21 be serious consequences for their actions.

22 I also want to touch very briefly on specific
23 deterrence. Your Honor raised a good point with respect to
24 him, the defendant, going back to China. But I will also note
25 that while certainly the Government's not in a place to

1 contest the defendant's remorse, there are a number of
2 instances in the defense submission where the defendant is
3 referred to as a cog or a pawn or merely going through the
4 motions. And frankly, with respect to the evidence and what
5 the defendant did in this case, it's the Government's position
6 that that is seriously undermining his state of mind and his
7 understanding as to what he was doing and his role in the
8 larger conspiracy. And again, for that reason, too, Your
9 Honor, the Government would argue that a serious sentence is
10 appropriate here.

11 And lastly, I want to talk a little bit about the
12 nature of the offense here, both for Counts One and Two, as
13 well as for Counts Three and Four. Frankly, I think the
14 defendant's conduct in this case can be characterized as
15 egregious and the conspiracy itself is also, frankly,
16 egregious. But as the Court put it in the post-trial
17 decision, the defendant here acted as a catalyst for the
18 scheme and the campaign to harass the victims and their
19 family, beginning in 2016 from August where he came back from
20 China and was tasked with engaging a private investigator
21 which he did, signed a retainer on behalf of PRC Government
22 officials, he provided Social Security, driver's license
23 numbers, extremely private information about the victims, to
24 Michael McMahon, and others in hopes of finding these
25 individuals for the Chinese Government. He provided photos of

1 extended family of the victims, he asked for very personal
2 details that are certainly unrelated to any lawful conduct.
3 For example, Jane Doe 1's college major, her residence hall,
4 extremely personal information for certainly the daughter of
5 the purported target of that scheme. In November 2016, he
6 facilitated in-person meetings. He brought and helped bring
7 PRC officials such as Hu Ji to meet with codefendant Michael
8 McMahon. And then certainly in May 2018, he himself went to
9 the home of Jane Doe 1's sister to take photos to ensure that
10 she still lived there. Ultimately, I think it's properly
11 inferred leading to the threatening mailings and extremely
12 disturbing videos that some of which were played at trial and
13 admitted into evidence.

14 And, Your Honor, we would dispute that the
15 defendant's purported state of mind is something the Court
16 should consider in terms of providing a lenient sentence and
17 that he was recruited under false pretenses. I think the
18 evidence plainly shows and certainly the defendant's
19 post-arrest interview evidences that he understood and
20 frankly, of the trial defendants, most obviously and most
21 plainly understood that this was part of Operation Fox Hunt
22 that he was being engaged as part of this campaign, that he
23 was engaging with Hu Ji who worked for the overseas Chinese
24 Affairs Bureau, which is certainly part of the Chinese
25 Government. There is not a point where the defendant seized

1 his activities because he knew what was going on and
2 certainly, I think it's quite obvious from the evidence that
3 he did and the jury found so.

4 The last things I want to touch upon are the actual
5 harms caused to the victims, certainly, irreparably scarring
6 them for life. I'm not going to reiterate everything the
7 victims testified to at trial, but certainly, John Doe 1
8 explained that he feared for the safety of his daughter and
9 his wife. Such an inherent harm to a family who's seeking to
10 live their life here in the United States. Jane Doe 1 closed
11 herself off to the world, in her own words, based on her fears
12 just for leaving the house and really to have her friends and
13 family harassed based as part of this campaign. And
14 certainly, their daughter who was reporting to their -- or
15 texting their mother, her mother every day to just tell her
16 that she's okay, physically safe, is a level of mental harm
17 and true distress that because of the defendant and his
18 co-conspirators, these victims will have to live with.

19 And I just want to touch lastly on the harms caused
20 by the defendant's criminal conduct in connection with Counts
21 One and Two. And as we've stated in our submissions,
22 certainly, the criminal acts here threatens the national
23 security of this country. And by assisting the Chinese
24 Government by acting covertly in the U.S. on American soil,
25 that is a harm that is frankly runs extremely deep and affects

1 every one in our community.

2 And the even more so, the actions here undermine the
3 safety and security of so many citizens and residents, who
4 many of whom, in this district, come from all places in this
5 world and they're just seeking much safety and safe haven from
6 persecution, and really the defendant's criminal conduct here
7 cuts to the heart of that sense of security and the new life
8 that many people are hoping to seek here and to live here.

9 And Your Honor, for those reasons, the Government
10 would recommend a sentence at the top of the guidelines now
11 with the revised guidelines, 57 months on Counts Three and
12 Four and then concurrent sentence of 48 months on Counts One
13 and Two.

14 THE COURT: Okay. All right. Thank you very much.
15 Did you want to say something else before I hear
16 from your client?

17 MR. SILVERMAN: Thank you, Your Honor. I want to
18 address just one very small point, and I just -- I don't want
19 the Court to think that we misstated something. I said that
20 Mr. Zhu can't type. I should have been clear, he can't use a
21 Romanized keyboard. There are something called B-I-H-U-A.
22 It's a system that you can use on a phone to put together
23 components of Chinese characters to communicate in characters
24 by text message. He's able to do that. I have communicated
25 with him that way, and I didn't mean to suggest that he's not

1 able to do that. He's not able to type on a keyboard is what
2 I meant.

3 THE COURT: And he doesn't use pinyin?

4 MR. SILVERMAN: He doesn't -- I --

5 THE COURT: And this is a small point. I know that
6 everything --

7 MR. SILVERMAN: No, Your Honor.

8 THE COURT: Okay. All right. Okay.

9 Mr. Zhu -- because Zhu is his last time, right? I'm
10 just making sure.

11 MR. SILVERMAN: Yes, Your Honor.

12 THE COURT: Okay. Did you want to say anything at
13 this time? You have a right to make a statement.

14 Mostly, I have to hear the interpreter, so yeah.
15 Not that it's not important. She has to hear him, but I have
16 to hear her.

17 THE DEFENDANT: Honorable Judge Chen, I want to
18 take this opportunity to pray for you good health and
19 everything smooth sail. I am Zhu Yong, male, 69 years old. I
20 was convicted in the trial that happened last year. I am
21 responsible, and I'm willing to plead guilty because I'm lack
22 of sufficiency in English, lack of understanding of the legal
23 knowledge, therefore, I have committed this serious mistake.
24 I hope I would get the Government's understanding. I regret
25 it very much so now that I did not plead guilty earlier. In

1 that case, I would get leniency from the Government. During
2 the trial, I heard what happened to the victims and I feel
3 very sad and very -- very sad and difficult, and I felt very
4 sad about it.

5 I have been to the U.S. for 24 years. I based on
6 the principle to be friendly to friends, working, work
7 diligently and abide by the law. I respect the old and love
8 the young. I live in America honestly. I make my
9 contribution to -- silently to the American prosperity. Yeah,
10 I make my contribution silently.

11 When I was young, I really dreamed of coming to
12 America because America is a Democratic and freedom country,
13 everyone was treated equally and everyone is respected by the
14 country. I have been in America for more than 20 years. I
15 have witnessed that America is the beacon of hope for freedom.
16 It's a Democratic and harmonious society. I also feel at the
17 same time the greatness of America. I have filled with love
18 and passion of the country, America.

19 THE COURT: Mr. Zhu, can I pause you for one second,
20 and I'll direct this question to you, Mr. Silverman.

21 Your client is essentially reading his letter that
22 he wrote to me and that you attached to your sentencing
23 submission. He certainly is free to do that, if he wants to.
24 But I think the time would be more profitably spent if perhaps
25 he would answer a question I have for him. But you can direct

1 him or advise him however you want. Because to me, the
2 critical issue in terms of an appropriate sentence is what he
3 was thinking at the time he was assisting in what he knew to
4 be an effort by China to get John Doe 1 and his wife to return
5 to China because the Government makes a strong argument that
6 Mr. Zhu, if anybody, and I alluded to this earlier, knows what
7 the Chinese Government is willing to do, and arguably, some of
8 the distasteful ways in which they try to get people in line.

9 So he wasn't ignorant in that regard and perhaps he
10 knew better than any of the American non-Chinese
11 co-conspirators. And I am trying to reconcile that with the
12 picture you've painted, I think quite effectively of a very
13 generous and honest man. A person who actually tries to
14 prevent people from being harmed, whether it's his family or
15 strangers, like the fruit vendor or the woman who was
16 drowning. So I'm having trouble reconciling this without
17 hearing from him. What did he think he was doing? Did he
18 actually understand the harm that he was causing? Because in
19 all that I've read, I don't understand that.

20 And not even in the letter that he provided. You've
21 alluded to the fact that he only realized after the fact what
22 harm he was causing. I think you said that or it wasn't until
23 he read the victims' statements that he realized how badly he
24 had harmed them. But I just want to understand a little bit
25 better, because he expresses remorse now. I understand that.

1 But I want to know what motivated him, and what did he think
2 he was doing?

3 MR. SILVERMAN: So, Your Honor, two things. One,
4 the letter and we understand we appreciate that it was trying
5 the Court's patience. It is --

6 THE COURT: Hang on. Hang on. Don't misunderstand
7 me. He's not trying my patience. I just don't think he needs
8 to read it into the record. I've read it. That's all I want
9 him to know.

10 MR. SILVERMAN: So it is longer than what he
11 provided to the Court.

12 THE COURT: Oh.

13 MR. SILVERMAN: It includes additional things,
14 including apologies to the victims, and some other things that
15 he's already read. But we appreciate the Court's -- what the
16 Court is saying.

17 I think that he certainly knew, it is correct, by
18 the time that Hu Ji was in New Jersey, that these were
19 officials from the Chinese Government. They told him that
20 they were there, they essentially told him that this was a
21 junket, that they didn't expect anything to come of it, that
22 this person was a corrupt official from Wuhan who was wanted
23 for bribery and embezzlement, I think the number \$400,000 was
24 thrown around --

25 THE COURT: And I think you said he didn't think the

1 Chinese Government was taking it seriously because these
2 officials were just having a boondoggle.

3 MR. SILVERMAN: That's what he thought and that's
4 what he -- and that got translated to the FBI as going through
5 the motions.

6 I think what he realized when he saw what the victim
7 said -- I don't think it was a new realization of the facts
8 but a realization of what happened to them and what they went
9 through. And, you know, I do think that that's -- I do think
10 that that was meaningful to him. But it wasn't -- as if to
11 say, he didn't understand that they wanted these people to
12 return, but I think it's implicit and going through the
13 motions of boondoggle that they weren't going to pull out all
14 stops, right? If this were in China, it would have been a
15 substantially curtailed operation, right? You know, this
16 person would just, you know, be in jail.

17 And so in terms of foreseeing -- you know, it is a
18 disagreement I have with the Government in terms of being able
19 to extrapolate from the Cultural Revolution of all things,
20 right, to what the Chinese Government was willing to do. I
21 should really say the PRC Government was willing to do in New
22 York in 2017, I don't think that there's any clear
23 foreseeability. I think that the allegations here surprised a
24 lot of people. I think that -- and I -- as I acknowledged in
25 the letter, he poorly navigated a new world that's more

1 interconnected in which the emperor is not as far as the sky
2 anymore and the reach of the PRC Government to try to
3 effectuate its will in the United States appears to be greater
4 than he would have imagined when he first came here 24 years
5 ago, and so in terms of what he actually thought they would
6 do, you know, I'm sure he thought that they would communicate
7 strong words with them. I have no reason to believe --

8 THE COURT: But will you let him, though, speak to
9 this point?

10 MR. SILVERMAN: I will. I'd like to confer with
11 him --

12 THE COURT: Okay.

13 MR. SILVERMAN: -- first before letting him speak
14 extemporaneously.

15 (Pause in the proceedings.)

16 MR. SILVERMAN: Your Honor, Mr. Zhu is prepared to
17 answer.

18 THE COURT: Okay. And I don't want to cut Mr. Zhu
19 off if he wanted to finish reading the letter, the extended
20 version or otherwise. So he should feel free to say whatever
21 he wants to.

22 MR. SILVERMAN: Your Honor, may I have a moment?

23 (Pause in the proceedings.)

24 MR. SILVERMAN: Your Honor, it might be helpful if
25 the Court re-pose its question, and then Mr. Zhu would be

1 willing to respond.

2 THE COURT: So Mr. Zhu, I would like to know what
3 you thought was going on with respect to the Chinese
4 Government trying to get the victims back to China when you
5 agreed to assist them in this effort.

6 THE DEFENDANT: At the time they were saying that
7 all you have to do is help us to locate this person. The
8 rest, you don't have to be involved in.

9 THE COURT: But when -- yes, go ahead.

10 But when you knew that they were wanted in China for
11 crimes, did that change your view about what was going to
12 happen to them or what the Chinese Government was going to do
13 to make them go back?

14 THE DEFENDANT: He did not tell me the truth. He
15 gave me a false pretense, and he said he owed money.

16 MR. SILVERMAN: Your Honor, can I --

17 THE COURT: Yes, go ahead.

18 (Pause in the proceedings.)

19 MR. SILVERMAN: Your Honor, just for the record,
20 I've asked my client to answer the question, what did he think
21 they were going to do with John Doe 1 after he arrived in
22 China.

23 (Pause in the proceedings.)

24 THE COURT: Can I ask another question.

25 At some point, Mr. Zhu, did you believe that your

1 actions were going to result in some harm to John Doe 1 and
2 Jane Doe 1?

3 THE DEFENDANT: After I was arrested, I realized
4 that would be the case. But before that, I did not.

5 THE COURT: What did you think was going to happen
6 after you gave all this information to Mike McMahon and
7 John Doe 1 was located?

8 THE DEFENDANT: I cannot determine what they're
9 going to do. But after I found the information, I did not
10 have contacts with them in two years.

11 MR. SILVERMAN: Your Honor, can I propose a
12 question?

13 THE COURT: Sure, please.

14 MR. SILVERMAN: Did you think that they would be put
15 in jail when they returned to China?

16 THE COURT: Meaning, John Doe?

17 MR. SILVERMAN: Meaning John Doe.

18 THE DEFENDANT: Based on the warrant, yes, he
19 would.

20 THE COURT: So based on the warrant, you thought
21 that John Doe 1 was going to end up in jail if he went back to
22 China?

23 THE DEFENDANT: Yes.

24 THE COURT: And did you have any belief as to what
25 the Chinese Government was willing to do to get him to go back

1 to China, how far they would go?

2 THE DEFENDANT: I did not know because I have no
3 contacts with them later. They reach out to me. I did not
4 reach out to them. Later, they claimed that they would get me
5 some money, so -- yeah, I did not reach out to them.

6 MR. SILVERMAN: Your Honor, I think --

7 THE COURT: Yes.

8 MR. SILVERMAN: -- if I can paraphrase.

9 What he's saying, which I think is true, is that he
10 didn't really think about what they would do --

11 THE COURT: Or how far they would go.

12 MR. SILVERMAN: -- or how far they would go.

13 THE COURT: So I'll acknowledge this is very
14 unusual, but I think what often happens in these cases even
15 when there's a trial is I really never get a direct sense of
16 the defendant. Everybody speaks about them or for them or
17 tries to characterize what they thought or what they felt or
18 why they acted a certain way. This is helpful to me to
19 actually hear Mr. Zhu directly answer the issue that is at the
20 center of my thinking on an appropriate sentence, which is why
21 I've detoured into this inquiry.

22 But I'll let Mr. Zhu finish his statement.

23 THE DEFENDANT: Because I have reached an old age,
24 I'm at retirement of a year, additionally, I have multiple
25 illness and psychologically I suffer from depression, I hope

1 Your Honor give me one chance to renew myself and give me an
2 opportunity to be a new person again. Let me see my lovely
3 grandchild who grow and thrive strongly. That's my last hope
4 of my life. I'm getting old. Please, Your Honor, give me a
5 chance to renew myself. My biggest hope is before I leave
6 this world, I would have a chance to spend my later year with
7 my family and my grandchildren harmoniously and peacefully.

8 Judge Chen, I'm really sorry that I indebted to
9 everyone. I regret it very much.

10 THE COURT: Sorry, could you repeat that last part
11 because it got obscured by the microphone.

12 THE DEFENDANT: I regret it very much. I've done
13 an offense that's against the American Democracy. The trial
14 take up everyone a lot of time. I want to take the chance to
15 thank Your Honor, again. I also plead to the nations, the
16 victims, and every American citizen for their forgiveness.

17 THE COURT: All right. Thank you very much,
18 Mr. Zhu.

19 Okay. I have considered the relevant factors set
20 forth by congress this Title 18, United States Code, Section
21 3553(a) that includes the advisory guideline range that
22 applies to Counts Three and Four, and then otherwise, I've
23 considered those factors as to Counts One and Two to ensure
24 that I impose a sentence that is sufficient, but not greater
25 than necessary to comply with the purposes of sentencing.

1 Those purposes include the need for the sentence to reflect
2 the seriousness of the crimes committed by the defendant, to
3 promote respect for the law, to provide just punishment for
4 the offenses that the defendant committed, to deter criminal
5 conduct by Mr. Zhu, and others who would seek to engage in the
6 same type of criminal activities, and to protect the public
7 from future crime by Mr. Zhu. I've also considered the nature
8 and circumstances of the offenses he committed, as well as,
9 his personal history and characteristics.

10 Let me discuss my consideration of those factors in
11 more detail. First of all, regarding the seriousness of the
12 crime, working for a foreign government as an unregistered
13 agent and stalking are both extremely serious crimes. There
14 cannot be any debate about that. By committing the
15 Section 951 offense, the defendant helped a foreign
16 Government, the People's Republic of China conduct a campaign
17 of -- and this is using the Government's words --
18 transnational repression against two individuals living in the
19 United States and seeking refuge here, quite frankly. And
20 that campaign included terrorizing their family members here
21 and in the PRC.

22 As the Government argues, quote, "By agreeing to
23 carry out an unsanctioned PRC operation on U.S. soil at the
24 direction of PRC Government officials, the defendant
25 threatened not only the personal safety of the victims, but

1 also, the United States sovereignty," end quote. These types
2 of crimes are a threat to this country's national security.
3 There can be no debate about that, as well. And as we've
4 discussed, by aiding his conspirators or co-conspirators in
5 surveilling, harassing and menacing the victims, the
6 defendant's conduct caused a second separate harm that is
7 terrorizing the victims and wreaking havoc in their lives,
8 which has permanently scarred them. The victims in this case
9 wrote about the severe and ongoing emotional, psychological
10 and even physical harm that they have and will continue to
11 suffer as a result of the actions of the defendant and his
12 co-conspirators at the direction of the Chinese Government.

13 At a minimum, the victim's sense of well-being and
14 personal safety has been destroyed. Which has, in turn,
15 caused serious impacts on their physical and psychological
16 health. So there's a clear need in this case for a sentence
17 that promotes respect for the law, provides general deterrence
18 and just punishment. These types of crimes do warrant
19 meaningful punishment for all those reasons.

20 The Government does cite, I think, appropriately,
21 the need to deter others from agreeing to engage in this crime
22 because as they note, and I've seen it myself, there is a
23 tremendous uptick in these prosecutions. I assume it
24 corresponds to an increase in the activity, itself but that
25 just may be that the Government is now more attuned to these

1 crimes. And by that, I mean the Section 951 crimes. We've
2 been getting more and more of these prosecutions just as the
3 Government notes in its submission. So it is necessary for
4 the sentence I impose on Mr. Zhu to send a clear message to
5 anyone else, who would seek to work for the Chinese Government
6 for this purpose, and not register, that there will be serious
7 consequences for doing so.

8 I have less of a concern about the need for specific
9 deterrence with respect to Mr. Zhu. We've discussed this
10 obviously, at some length. But he is 68 years old but maybe
11 under the Chinese system he considers himself 69. But I
12 think -- chronologically, I think he's 68. And he does seem
13 genuinely remorseful. As I said a moment ago, I did engage in
14 what is somewhat an unusual exercise of posing to him the
15 question about what he was thinking because I think only he
16 can really convey that. And I wanted to hear what he said.

17 I'll explain or discuss this more in a moment, but
18 it's been my abiding sense with Mr. Zhu even through the trial
19 and before trial, that he's not a sophisticated person, and
20 he -- and this is obviously borne out by his rather
21 unfortunate circumstances and during the Cultural Revolution
22 and being deprived of many opportunities as a result, and then
23 struggling to build a life for himself and his son here in the
24 U.S., that he isn't someone who's very worldly or understands,
25 perhaps, all the ways of the world.

1 Now, the Government makes a very good point, and
2 I've said this myself, that having been punished or retaliated
3 against by the Chinese Government or mistreated by them,
4 himself, you would think he would be very aware of what the
5 Chinese Government is capable of. But I think the last
6 20-plus-years has perhaps imbued him with some kind of
7 optimism that has obscured or maybe dimmed his view about how
8 brutal the Chinese Government can be. And as his lawyer just
9 explained now, perhaps he thought that here in the U.S., the
10 Chinese Government wouldn't be able to carry out some of the
11 extremely brutal actions that it has or can do or has done in
12 China.

13 So I am not as concerned that Mr. Zhu is going to
14 reoffend. He is elderly. His main concern, I'm sure, will be
15 to take care of himself and try to remain in contact with his
16 family should he be deported. I did pose the possibility that
17 maybe with the lure of money he might reoffend even when he's
18 back in China, but I think Mr. Silverman's responses is
19 probably correct, there's really not much I think Mr. Zhu can
20 do for them in this area, nor do I think that the Chinese
21 Government would necessarily trust Mr. Zhu, given how he has
22 expressed remorse for the actions he's done here and admitted
23 his complicity in these actions. And as Mr. Silverman notes
24 there are very, very many people in China that they could
25 recruit who might be far more useful to them than Mr. Zhu upon

1 his return. So I think the risk of recidivism is low here,
2 and the sentence that I impose, I don't think needs to promote
3 or further that goal.

4 Regarding Mr. Zhu's character, the defense has
5 provided a number of letters from his friends and family
6 attesting to his good, generous and unusually, I would say,
7 honest character. I have to admit that I was struck by the
8 number of different accounts from different people of
9 Mr. Zhu's acts of kindness, spontaneous kindness and
10 exceptional honesty.

11 For example, the stories I mentioned about going
12 back to the fruit vendor when she gave him far too much
13 change, or trying to save the drowning woman when Mr. Zhu
14 himself apparently cannot swim. These letters definitely, as
15 I said before, paint a picture of someone who really has
16 always gone out of his way, certainly long before he got
17 arrested, and had a reason to try to put himself in the best
18 light, to help other people, and that he's genuinely kind and
19 thoughtful towards others, even those beyond his family.

20 Now, this is very much at odds with someone who
21 would knowingly or intentionally seek to help the Chinese
22 Government harm others, to harass them, to coerce them, to
23 convince them to come back and go to jail. This is why I find
24 that I'm in a bit of a dilemma here trying to reconcile what
25 are these two different pictures borne out by the statements

1 and evidence I have before me. Because on the other side,
2 just as the Government argues, I think quite convincingly,
3 Mr. Zhu knew that he was helping the Chinese Government, at
4 some point tried to return someone to face prosecution and
5 imprisonment. I don't think he denies that. He may not have
6 known it at first, but he certainly knew it at some point
7 while he was still involved with the Chinese Government, and
8 that continued into May of 2018 at a minimum. And he even
9 went back to China after that. So like I said, this is a
10 conundrum for me because these acts and what they reflect
11 about his character are at odds.

12 So I come away, quite frankly, concluding and this
13 is again why I asked these questions directly of Mr. Zhu is,
14 in many ways, I think he is and was naive and to a large
15 extent, ignorant, about the harm he was causing these victims
16 by helping the Chinese Government. He certainly knew what he
17 was doing, but he failed to appreciate, it seems to me, the
18 gravity of what he was doing and the actual harm he was
19 visiting on people that I think in another context, he might
20 actually try to save or help. And I see that, quite honestly,
21 and this doesn't get conveyed in the cold record, from even
22 how he responds to the questions.

23 Again, I don't think and I don't mean any disrespect
24 to Mr. Zhu, he's a particularly sophisticated person. I think
25 he sees a situation in front of him, and he doesn't really

1 think too hard or too long about the ramifications and maybe
2 that's why he acts out of kindness in a way that might danger
3 himself like trying to save a drowning person who he himself
4 might drown but also it means he tried to help a repressive
5 Government, a Government he knows is repressive, or certainly
6 has been, to try to capture, if you will, or repatriate, as
7 they say, other citizens of China, fellow citizens of China.

8 So I will also comment on the difficulty in
9 sentencing I think defendants in these types of cases, and by
10 this I mean the 951 cases. What I mean is that the truly bad
11 actors, the Chinese Government, and its officials, and I
12 should say the PRC Government, the CCP, and its officials or
13 agents, they cannot be held accountable or punished unless
14 perhaps they make the mistake of coming back to the country
15 and the Government happens to catch them, someone like Ji Hu
16 or Hu Ji. Rather, what we have is someone who acknowledges
17 that he did a bad thing, but yet, as I said before, really
18 fails to appreciate the scope and the gravity of his conduct
19 and the real harm that he has helped cause, certainly,
20 indirectly has caused to these victims and to this country,
21 which I think he's now fully realizing by working for the PMC.

22 So as I said before, while Mr. Zhu is not
23 sophisticated or worldly, he did knowingly and willfully
24 become part of a conspiracy that has ruined the lives of the
25 victims and their families, both here and in China. But

1 Mr. Zhu didn't act willfully or out of any intent to harm the
2 victims. That I'm sure of. And I also realize willfulness is
3 not necessarily relevant, and it's certainly not required to
4 commit the crime. But I do find that Mr. Zhu's naivety and a
5 misguided belief that this was maybe a good way to earn some
6 money and visit his family, get trips to visit his family did
7 contribute to his involvement in these offenses.

8 The characterization of Mr. Zhu as a pawn certainly
9 correct from the perspective of the Chinese Government, but as
10 Government points out, it doesn't undermine his own volition.
11 He did the act knowingly. He knew he was helping the Chinese
12 Government do exactly what they were trying to do. He just
13 really didn't appreciate how much harm he was causing and
14 wreaking on the victims.

15 I think it warrants some downward variance. Maybe,
16 because as Mr. Silverman argues, stalking is typically a crime
17 where the persons involved in the stalking, even if they're
18 just conspirators, have some desire to visit harassment and
19 harm on people. I think Mr. Zhu definitely got involved in
20 this conspiracy knowing that this would be a likely
21 consequence that these victims would be harassed, but he
22 seemed to fail to appreciate how bad that would be, and he
23 certainly, in my mind, doesn't have the kind of character
24 where he wants to harm people. So he became -- and I don't
25 want to use the word "unwitting" because he knew what he was

1 doing -- but he became a conspirator in some very bad conduct
2 without a full appreciation of how harmful it was.

3 And he did get used by the Chinese Government,
4 there's no question, but that's how they commit these crimes,
5 of course.

6 The defendant's age and his physical and mental
7 health issues I think also warrant some consideration. I've
8 reviewed the papers that have been submitted to me and recount
9 his various ongoing health issues and his mental health issues
10 which I think are significant. His family is also reporting
11 increasing short-term memory loss, which is not surprising
12 given his age and includes things such as failing to turn off
13 the stove, which is obviously dangerous in the context of
14 prison, obviously, it's less significant. But while I do find
15 that Mr. Zhu's conditions currently appear to be manageable,
16 given his age and the historical progression of his ailments,
17 as well as his overall physical and mental deterioration over
18 the last few years, I do think that jail will be especially
19 hard on him and hard for him. I also know, based on reports
20 that we get in cases and otherwise, that medical care is often
21 wanting in the Bureau of Prisons system. I certainly can't
22 predict with any certainty where Mr. Zhu will go or what the
23 medical care will be like, but I think it's fair to assume
24 that he will have to endure some difficulties with respect to
25 his medical situation and his mental health situation.

1 Is he all right? Do we need a break?

2 MR. SILVERMAN: Your Honor, may I have one moment?

3 THE COURT: Yeah, go ahead.

4 (Pause in the proceedings.)

5 MR. SILVERMAN: Thank you, Your Honor. We're okay.

6 THE COURT: And so I think this is also a basis for
7 a downward variance from the guidelines range and a
8 consideration under the 3553(a) factors.

9 The defendant's childhood and early adult life, I
10 don't think, though, warrants a downward variance. In that
11 regard, I agree with the Government. It doesn't explain or
12 justify why he committed the crime. If anything, it defies
13 logic that he would want to sign up to help the Chinese
14 Government do anything or to trust them to treat him fairly
15 given the inhumane treatment he suffered at their hands
16 earlier. So I don't think his growing up in the Cultural
17 Revolution is difficult as I know it must have been warrants a
18 downward departure.

19 I hear what you're saying, Mr. Silverman, about a
20 different viewpoint or perspective based on where someone
21 grows up and their experiences. Here, I don't actually think
22 it is mitigating in Mr. Zhu's circumstance for that reason. I
23 think he's more educated, as the Government notes, about the
24 brutality that the Chinese Government, again, always referring
25 to the PRC, is capable of. So I just don't think it helps him

1 here.

2 Now, in terms of the messaging that he might
3 perceive now that he's living abroad, I don't think that
4 that's particularly relevant either, but it is relevant to the
5 sentencing that I'm going to impose in terms of general
6 deterrence, and I think that might have been some of what you
7 were alluded to. And I'll explain that further in a moment.

8 Finally, or almost finally -- penultimately, I will
9 say -- deportation. Ordinarily, I agree with the Government
10 that deportation is not a basis for a downward variance or a
11 departure because it is the normal and predictable consequence
12 of a felony conviction, and maybe this sounds harsh, but
13 something that a defendant ought to think about and consider
14 before choosing to engage in criminal conduct if they are a
15 resident and not a citizen of the U.S.

16 And again, the Government makes an interesting point
17 about the defendant's alienage not serving as a mitigating
18 factor because it gave him an advantage in terms of committing
19 this crime since he was able to move fluidly between China and
20 here. I haven't really considered that for purposes of
21 sentencing. I've obviously considered it in a different
22 context in a way. But I do think that in this case that in
23 Mr. Zhu's case, his likely deportation is an unusually harsh
24 consequence, perhaps, even a punishment, because it will tear
25 Mr. Zhu away from his son and his family, his grandchildren,

1 and his daughter-in-law after Mr. Zhu spent the last 20-plus
2 years and hard years, I think, trying to establish a good life
3 for himself and for his son in this country. So his
4 deportation wreaks a particularly harsh consequence for him
5 because of that separation.

6 It's somewhat akin to when children come here from
7 another country as -- or people come here as children from
8 another country and this is the only country they've ever
9 known and then they get deported because they're actually not
10 citizens. For all practical purposes, Mr. Zhu's tried to
11 establish himself as a citizen here for many years and has
12 worked hard to do so and has tried to embrace American values,
13 notwithstanding his involvement in this crime, and now, his
14 family is here and he's going to have to be exiled or banished
15 from the place he believes is his home and his children's
16 home. So it's different, in a way, and it's unusually harsh,
17 I think, for Mr. Zhu.

18 With regard to his pretrial and presentence release
19 conditions, I've given that some thought. I don't think they
20 were particularly Draconian, so I don't think they're
21 necessarily worth a downward variance.

22 Lastly, I have considered the need to avoid
23 unwarranted disparities between similarly situated defendants
24 and both sides spent a fair bit of paper trying to tell me
25 about comparable cases with sentences higher than the

1 guidelines range here or lower than the guidelines range and
2 even sentences of probation on the defense side. I find this
3 particular factor so hard to apply in any sensible way because
4 as everyone knows, sentencing is decided based on many more
5 factors -- or sentence is determined based on many more
6 factors than the crime they committed. And usually, it's
7 things that I won't be able to learn about or read about or
8 process. So I don't find them particularly helpful. It's
9 many of the personal factors that go into any sentence that a
10 judge imposes, just like here.

11 I do want to address one other thing. I think the
12 Government is right, Mr. Silverman, that even though Mr. Zhu
13 will lose his Social Security and Medicare benefits, that
14 would likely happen even if he remained in the U.S. It has, I
15 think, nothing to do with China. That is typically a
16 collateral consequence of committing a felony and it's not
17 something that I think warrants a variance. It's really about
18 the separation, the forced separation from his family that I
19 think is unusual and harsh.

20 So after assessing the particular facts and
21 circumstances of this case, in light of the relevant Section
22 3553(a) factors, and the advisory guidelines range that
23 applies to two of the counts, I am sentencing the defendant to
24 24 months in custody, and that's on Counts One -- all the
25 counts, but to run concurrently with each other.

1 I know this is far below what the Government sought
2 but as I said, I think Mr. Zhu's particular circumstances and
3 history and characteristics and his involvement in this
4 crime -- and I won't call it his role because I think that's
5 different. But really, his mindset, I think warrants a
6 departure. I think this is a defendant who really failed to
7 understand or appreciate the gravity of what he was doing.

8 I'm mindful of the fact that this could be said in
9 other situations, but not usually, I don't think. Typically,
10 for example, drug dealers who sell drugs knowing that they
11 know they're harming people, people who use guns know that
12 they're harming people, people who steal money from bank
13 accounts and commit fraud know they're harming people. This
14 crime is an unusual one because it's really a foreign actor
15 getting people to do their bidding and to undermine our
16 national security and then harm individuals who are quite
17 remote, oftentimes, or at least as to Mr. Zhu, in terms of his
18 criminal conduct.

19 What I am going to mention about this is general
20 deterrence. I know the Government is concerned about the
21 message that a 24 versus a 57-month sentence will send to
22 others who could make the same wrong decision to work for a
23 foreign Government. I'm hopeful that maybe this case won't be
24 cited as trying to promote unwarranted disparities because I
25 think there are many factors, personal factors, that I think

1 that are at play here. And I think Mr. Zhu's situation is not
2 even comparable to his codefendant in this case, so I don't
3 want this to be recited to me as a data point for that reason.

4 And I think it will send a message of general
5 deterrence to the target audience, which is, I think, this
6 immigrant community, because two years in prison is not a slap
7 on the wrist, in my opinion. It's long and it'll be hard for
8 Mr. Zhu. I quite honestly regret having to impose this
9 sentence. But all the other sentencing factors, including the
10 seriousness of the crime and the need for general deterrence,
11 do warrant something that is meaningful, and I think 24 months
12 is. And I don't think anyone who might be tempted to commit
13 this crime would think it's a good idea to risk it. And like
14 I said, I think Mr. Zhu is unique, even as to his
15 co-conspirators for reasons that cut both ways. But in terms
16 of his, let me call it, mental culpability or understanding
17 about the gravity of what he's done, I think Mr. Zhu is
18 different from even his co-conspirators. All right.

19 I think I've spoken enough. So as I said before,
20 it's 24 months on each count to run concurrently with each
21 other. I will impose a term of two years of supervised
22 release even though it seems highly likely Mr. Zhu will be
23 deported upon finishing his prison term. I will impose on the
24 supervised release, special conditions, the ones that are
25 recommended by the probation department in their sentencing

1 recommendation. I trust, Mr. Silverman, you've reviewed the
2 details of those conditions with Mr. Zhu.

3 MR. SILVERMAN: Yes, Your Honor.

4 THE COURT: Okay. I want to summarize them, but I
5 won't read the details based on your representation. But I
6 will ask you if you object to any one of them. First of all,
7 if Mr. Zhu is deported or excluded, he will not illegally
8 re-enter the United States. And also, Mr. Zhu will cooperate
9 with and abide by all instructions of immigration authorities.
10 Those two conditions are imposed simply to ensure that Mr. Zhu
11 follows the law.

12 Any objection to those?

13 MR. SILVERMAN: No, Your Honor.

14 THE COURT: The defendant will also not associate
15 in-person, through mail, electronic mail, the internet, social
16 media, telephone, or any other means with any victim of the
17 instant offense, that obviously is to ensure that Mr. Zhu does
18 not reoffend and that the victims are not harmed any further.

19 Any objection to that?

20 MR. SILVERMAN: No objection.

21 THE COURT: Okay. And then lastly, I will direct
22 that the defendant participate in a mental health treatment
23 program approved by the U.S. Probation department and then
24 there are some other conditions about that condition. The
25 reason I'm imposing that is because if Mr. Zhu is fortunate

1 enough to be released here in the United States to serve his
2 supervised release, I think he needs to address what he has
3 acknowledged is depression and other mental health issues and
4 I want him to get whatever support he needs to be able to
5 successfully live in the community.

6 Any objection?

7 MR. SILVERMAN: No objection. Thank you, Your
8 Honor.

9 THE COURT: Okay. I am not going to impose a fine
10 on Mr.-- oh, let me also say this: This sentence is one that
11 I would have imposed regardless of the guidelines range and my
12 resolution of all the different objections to the guidelines
13 calculation. So that includes the objection about Mr. Zhu not
14 getting the two-level reduction for acceptance of
15 responsibility. I have been guided foremost by the Section
16 3553(a) factors. This is the sentence that I think is
17 appropriate for all counts for the reasons that I think I've
18 discussed at some rather exhausting length. And so therefore,
19 this is a sentence I would give regardless of what the
20 guideline range was calculated to be or is calculated to be,
21 should there be an appeal that reverses my decisions on those
22 issues.

23 Okay. Restitution. Oh, sorry, let me go back to
24 the fine. I'm not imposing a fine because I don't find that
25 Mr. Zhu has any ability to pay one.

1 Restitution hasn't been requested by any victim; is
2 that correct?

3 MS. CHEN: That's correct, Your Honor.

4 THE COURT: Okay. So I'm not imposing any
5 restitution, even though ordinarily, it would be mandatory
6 under 3663(a) as to Jane Doe 1 and John Doe 1. Maybe as to
7 Jane Doe 2 also; is that right? In any event, to the extent,
8 it would be -- probably, it might be mandatory as to all
9 victims.

10 Special assessment. I'm imposing \$400 in total.
11 That's \$100 per count of conviction. That's due immediately.

12 Forfeiture. I don't think the Government's seeking
13 any forfeiture, correct?

14 MS. CHEN: No, Your Honor.

15 THE COURT: Okay. So no forfeiture.

16 Mr. Zhu, let me advise you about your right to
17 appeal. You have the right to appeal your conviction and
18 sentence in this case. Any notice of appeal must be filed
19 within 14 days of the filing of the entry of a judgment which
20 should happen in the next day or so or within 14 days of the
21 filing of a notice of appeal by the Government, if the
22 Government chooses to appeal the sentence that I just imposed.
23 If requested, the clerk will prepare and file a notice of
24 appeal on your behalf. If you cannot afford to pay the cost
25 of an appeal or for appellate counsel, you have the right to

1 ask that the filing fee be waived for your appeal and for
2 Court-appointed counsel for your appeal, if any.

3 Do you understand your right to appeal?

4 All right. Let's talk about --

5 MR. SILVERMAN: Mr. Zhu is nodding, but he
6 understands.

7 THE COURT: Yes. So Mr. Zhu, do you understand? I
8 prefer you verbalize that, your right to appeal.

9 MR. SILVERMAN: Your Honor, would the Court mind
10 asking the question one more time?

11 THE COURT: You understand your right to appeal,
12 Mr. Zhu?

13 THE DEFENDANT: Yes.

14 THE COURT: All right. So let's discuss the matter
15 of surrender.

16 MR. SILVERMAN: Thank you, Your Honor.

17 He was asking if I will be his lawyer for the
18 appeal, and I said we'll discuss later.

19 THE COURT: Okay. Of course.

20 Government, what's your position on remand?

21 MS. CHEN: Can I have one moment, Your Honor?

22 THE COURT: Yes, please.

23 (Pause in the proceedings.)

24 THE COURT: If it's helpful to the Government, I
25 prefer to let Mr. Zhu get his affairs in order and give him a

1 reasonable time to talk with his family. Sadly, this may be
2 the last time he gets to see them for quite some time.

3 MS. CHEN: Yes, Your Honor. I think the Government
4 would consent to a surrender date that's appropriate so that
5 Mr. Zhu could be designated to appropriate facility.

6 THE COURT: Okay. So to spare him having to go into
7 the MDC pending his permanent designation, I will have Mr. Zhu
8 surrender, allow him to surrender as directed by the -- who
9 does it, marshals or --

10 THE COURTROOM DEPUTY: No.

11 THE COURT: Okay. So he'll be directed by probation
12 where he should report to begin serving his time.

13 THE COURTROOM DEPUTY: April.

14 THE COURT: So that will be by April 15th at 2:00
15 p.m.

16 THE COURTROOM DEPUTY: Before.

17 THE COURT: Before. Before April 15th.

18 THE COURTROOM DEPUTY: No, Your Honor. By
19 April 15th before 2:00 p.m.

20 THE COURT: Okay. By April 15, before 2:00 p.m.
21 Okay. All right.

22 Is there anything else to address in this matter?

23 MS. CHEN: Not from the Government, Your Honor.

24 THE COURT: Okay.

25 MR. SILVERMAN: Your Honor, we respectfully request

1 that the Court recommend that BOP designate Mr. Zhu either to
2 FCI Otisville or in the alternative, as near as possible to
3 the New York area to facilitate family visits.

4 THE COURT: Absolutely.

5 MR. SILVERMAN: Okay.

6 THE COURT: I will do that.

7 I don't know if this is possible, but something you
8 said, Mr. Silverman, caused me some concern that Mr. Zhu will
9 be designated as high security risk and placed in a facility
10 with violent defendants.

11 I mean, does anyone know whether or not that's true,
12 stalking could be categorized as a violent offense?

13 MR. SILVERMAN: That's interesting. So what I know
14 is that he cannot, like Mr. McMahon, be designated to a camp.
15 So for example, most white-color offenders in this district go
16 to camp Otisville, which is a very low security facility.
17 That's not allowed. And FCI is a medium security facility.

18 THE COURT: Okay.

19 MR. SILVERMAN: Certainly, his immigration status
20 will allow that.

21 How BOP would otherwise score him, I have not gone
22 through their SENTRY score at this point?

23 THE COURT: Well, I don't want to raise an issue
24 that may never come to pass. But at this point, I will make
25 the recommendation about not Otisville, what did you request?

1 Something as close as possible, right?

2 MR. SILVERMAN: FCI Otisville or in the alternative,
3 as near as possible to New York to facilitate family visits.

4 THE COURT: So he can get designated to Otisville
5 even though he wouldn't be designated to the camp at
6 Otisville?

7 MR. SILVERMAN: Right. Because Otisville has an FCI
8 medium and a camp like Allenwood had a USP, and it has -- it
9 has multiple security facilities, as I understand it, within
10 the same compound.

11 THE COURT: Okay.

12 MR. SILVERMAN: That's my understanding.

13 THE COURT: All right. Anything else from the
14 Government?

15 MS. CHEN: No, Your Honor.

16 THE COURT: Thank you, everyone. I truly appreciate
17 your advocacy. I view this as a terribly unfortunate
18 circumstance.

19 But I do wish you good luck, Mr. Zhu, as well as
20 good wishes to your family.

21 (Judge confers with the courtroom deputy.)

22 THE COURT: So my deputy is trying to coach me on
23 what exactly I'm supposed to say on the surrender issue
24 because it may matter.

25 Let me read over your shoulder, Fida. I can do

1 that?

2 THE COURTROOM DEPUTY: Yes.

3 THE COURT: Okay. So the defendant shall surrender
4 for service of sentence at the institution designated by the
5 Bureau of Prisons before 2:00 p.m. on April 15, 2025.

6 Okay. All right. Thank you, everyone.

7 MR. SILVERMAN: Thank you, Your Honor.

8
9 (Whereupon, the matter was concluded.)

10
11 * * * * *

12
13
14 I certify that the foregoing is a correct transcript from the
15 record of proceedings in the above-entitled matter.

16 s/ Avery N. Armstrong

January 28, 2025

17 AVERY N. ARMSTRONG

DATE